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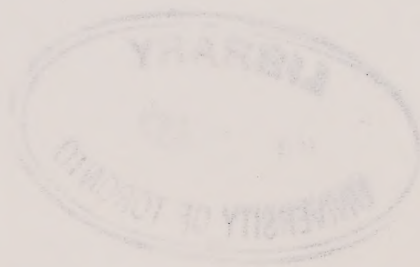
Consolidated Ontario Insurance Statutes and Regulations 1997



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Summary Contents Introduction

The *Consolidated Ontario Insurance Statutes and Regulations 1997* is the third edition of an annual publication designed to consolidate the Ontario statutes and regulations most relevant to the practice of insurance law.

This edition contains the *Insurance Act*, R.S.O. 1990, c. I.8, *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25, Part V of the *Corporations Act*, R.S.O. 1990, c. C.38, *Investment Contracts Act*, R.S.O. 1990, c. I.14, *Motor Vehicle Accident Claims Act*, R.S.O. 1990, c. M.41, and *Registered Insurance Brokers Act*, R.S.O. 1990, c. R.19. In addition, the Consolidation includes regulations made under the above Acts and the Dispute Resolution Practice Code under the *Insurance Act*.

The statutes and regulations are current to September 3, 1996.



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INSURANCE ACT

R.S.O. 1990, c. I.8, as am. S.O. 1993, c. 10, ss. 1-51;
S.O. 1993, c. 27, Sch.; S.O. 1994, c. 11, ss. 336-348;
S.O. 1994, c. 27, s. 43(2); S.O. 1996, c. 21, ss. 1-49.

DEFINITIONS

1. “definitions”.—In this Act, except where inconsistent with the interpretation sections of any Part,

“accident insurance”.—“accident insurance” means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause;

“accidental death insurance”.—“accidental death insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay an additional amount of insurance money in the event of the death by accident of the person whose life is insured;

“accountant”.—“accountant” means a person who is licensed under the *Public Accountancy Act*;

“actuary”.—“actuary” means a Fellow of the Canadian Institute of Actuaries;

“adjuster”.—“adjuster” means a person who,

- (a) on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guaranty bond issued by an insurer, or investigates, adjusts or settles any such loss or claim, or
- (b) holds himself out as an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims,

but does not include,

- (c) a barrister or solicitor acting in the usual course of his profession,
- (d) a trustee or agent of the property insured,
- (e) a salaried employee of a licensed insurer while acting on behalf of such insurer in the adjustment of losses,
- (f) a person who is employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence, or
- (g) a person who acts as an adjuster of marine losses only;

“agent”.—“agent” means a person who, for compensation, commission or any other thing of value,

- (a) solicits insurance on behalf of an insurer who has appointed him to act as the agent of such insurer or on behalf of the Facility Association under the *Compulsory Automobile Insurance Act*; or
- (b) solicits insurance on behalf of an insurer or transmits, for a person other than himself, an application for, or a policy of insurance to or from such insurer, or offers or assumes to act in the negotiation of such insurance or in negotiating its continuance or renewal with such insurer,

and who is not a member of the Registered Insurance Brokers of Ontario;

“aircraft insurance”.—“aircraft insurance” means insurance against loss of or damage to an aircraft and against liability for loss or damage to persons or property caused by an aircraft or by the operation thereof;

“automobile”.—“automobile” includes a trolley bus and a self-propelled vehicle, and the trailers, accessories and equipment of automobiles, but does not include railway rolling stock that runs on rails, watercraft or aircraft;

“automobile insurance”.—“automobile insurance” means insurance,

- (a) against liability arising out of,
 - (i) bodily injury to or the death of a person, or
 - (ii) loss of or damage to property,caused by an automobile or the use or operation thereof; or
- (b) against loss of or damage to an automobile and the loss of use thereof,

and includes insurance otherwise coming within the class of accident insurance where the accident is caused by an automobile or the use or operation thereof, whether liability exists or not, if the contract also includes insurance described in clause (a);

“boiler and machinery insurance”.—“boiler and machinery insurance” means insurance against loss or damage to property and against liability for loss or damage to persons or property through the explosion, collapse, rupture or breakdown of, or accident to, boilers or machinery of any kind;

“broker”.—“broker” means an insurance broker within the meaning of the *Registered Insurance Brokers Act*;

“cash-mutual corporation”.—“cash-mutual corporation” means a corporation without share capital that is empowered to undertake insurance on both the cash plan and the mutual plan;

“chief agency”.—“chief agency” means the principal office or place of business in Ontario of any licensed insurer having its head office out of Ontario;

“class of risk exposure”. [Repealed. S.O. 1993, c. 10, s. 2(1).]

“Commission”.—“Commission” means the Ontario Insurance Commission;

- “Commissioner”**.—“Commissioner” means the commissioner of insurance appointed under section 3;
- “compensation association”**.—“compensation association” means a body corporate or unincorporated association the purpose of which is to provide compensation to claimants and policyholders of insolvent insurers and that has been designated under the regulations as a compensation association.
- “contract”**.—“contract” means a contract of insurance, and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
- “credit insurance”**.—“credit insurance” means insurance against loss to the insured through the insolvency or default of a person to whom credit is given in respect of goods, wares or merchandise;
- “Director”**.—“Director” means the director of arbitrations appointed under section 6;
- “disability insurance”**. — “disability insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay insurance money or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease;
- “due application”**.—“due application” includes such information, evidence and material as the Superintendent requires to be furnished, and also the payment of the fees hereinafter prescribed in respect of any application, certificate or document required or issued by virtue of this Act;
- “employers’ liability insurance”**.—“employers’ liability insurance” means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss to an employer through liability for accidental injury to or death of an employee arising out of or in the course of his employment, but does not include workmen’s compensation insurance;
- “endowment insurance”**. — “endowment insurance”, as applied to a fraternal society, means an undertaking to pay an ascertained or ascertainable sum at a fixed future date if the person whose life is insured is then alive, or at the person’s death if he or she dies before such date;
- “exchange” or “reciprocal or inter-insurance exchange”**.—“exchange” or “reciprocal or inter-insurance exchange” means a group of subscribers exchanging reciprocal contracts of indemnity of inter-insurance with each other through the same attorney;
- “foreign jurisdiction”**. — “foreign jurisdiction” means a jurisdiction other than Ontario;
- “fire insurance”**.—“fire insurance” means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to property through fire, lightning or explosion due to ignition;

“fraternal society”. — “fraternal society” means a society, order or association incorporated for the purpose of making with its members only, and not for profit, contracts of life, accident or sickness insurance in accordance with its constitution, by-laws and rules and this Act;

“governing executive authority”. — “governing executive authority” means the executive committee, executive board, management committee, grand executive committee or such other board, committee or body as is charged under the constitution and rules of a fraternal society with its general management between general meetings;

“guarantee insurance”. — “guarantee insurance” means the undertaking to perform an agreement or contract or to discharge a trust, duty or obligation upon default of the person liable for such performance or discharge or to pay money upon such default or in lieu of such performance or discharge, or where there is loss or damage through such default, but does not include credit insurance;

“hail insurance”. — “hail insurance” means insurance against loss of or damage to crops in the field, whether growing or cut, caused by hail;

“head office”. — “head office” means the place where the chief executive officer of an insurer transacts his business;

“industrial contract”. — “industrial contract” means a contract of life insurance for an amount not exceeding \$2,000, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, and that provides for payment of premiums at fortnightly or shorter intervals, or, if the premiums are usually collected at the home of the insured, at monthly intervals;

“inland transportation insurance”. — “inland transportation insurance” means insurance (other than marine insurance) against loss of or damage to property,

(a) while in transit or during the delay incidental to transit, or

(b) where, in the opinion of the Superintendent, the risk is substantially a transit risk;

“insurance”. — “insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event and includes life insurance;

“insurance fund” or “insurance funds”. — “insurance fund” or “insurance funds”, as applied to a fraternal society or as applied to a corporation not incorporated exclusively for the transaction of insurance, includes all money, securities for money and assets appropriated by the rules of the society or corporation to the payment of insurance liabilities or appropriated for the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union appropriated to or applicable for the voluntary assistance of wage earners unemployed or upon strike;

- “insurance money”**.—“insurance money” means the amount payable by an insurer under a contract, and includes all benefits, surplus, profits, dividends, bonuses, and annuities payable under the contract;
- “insurance on the cash plan”**.—“insurance on the cash plan” means any insurance that is not mutual insurance;
- “insurer”**.—“insurer” means the person who undertakes or agrees or offers to undertake a contract;
- “life insurance”**.—“life insurance” means an undertaking by an insurer to pay insurance money,
- (a) on death; or
 - (b) on the happening of an event or contingency dependent on human life; or
 - (c) at a fixed or determinable future time; or
 - (d) for a term dependent on human life, and, without restricting the generality of the foregoing, includes,
 - (e) accidental death insurance but not accident insurance;
 - (f) disability insurance; and
 - (g) an undertaking entered into by an insurer to provide an annuity or what would be an annuity except that the periodic payments may be unequal in amount and such an undertaking shall be deemed always to have been life insurance;
- “livestock”**.—“livestock” means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss through the death or sickness of or accident to an animal;
- “lodge”**.—“lodge” includes a primary subordinate division, by whatever name known, of a fraternal society;
- “marine insurance”**.—“marine insurance” means insurance against,
- (a) liability arising out of,
 - (i) bodily injury to or death of a person, or
 - (ii) the loss of or damage to properties; or
 - (b) the loss of or damage to property,
- occurring during a voyage or marine adventure at sea or on an inland waterway or during delay incidental thereto, or during transit otherwise than by water incidental to such a voyage or marine adventure;
- “Minister”**.—“Minister” means the Minister of Finance. (“ministre”);
- “motor vehicle liability policy”**.—“motor vehicle liability policy” means a policy or part of a policy evidencing a contract insuring,

(a) the owner or driver of an automobile; or

(b) a person who is not the owner or driver thereof where the automobile is being used or operated by his employee or agent or any other person on his behalf,

against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;

“mutual benefit society”.—“mutual benefit society” means a mutual corporation formed for the purpose of providing sick and funeral benefits for its members, or for these and any other purposes necessary or incidental thereto except life insurance, but does not include a pension fund or employees’ mutual benefit society incorporated under or subject to the *Corporations Act*;

“mutual corporation”.—“mutual corporation” means a corporation without share capital that is empowered to undertake mutual insurance exclusively;

“mutual insurance”.—“mutual insurance” means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts, whether or not the maximum amount of such consideration is predetermined;

“non-owner’s policy”.—“non-owner’s policy” means a motor vehicle liability policy insuring a person solely in respect of the use or operation by him or on his behalf of an automobile that is not owned by him;

“officer”.—“officer” includes a trustee, director, manager, treasurer, secretary or member of the board or committee of management of an insurer and a person appointed by the insurer to sue and be sued in its behalf;

“owner’s policy”.—“owner’s policy” means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by him and within the description or definition thereof in the policy and, if the contract so provides, in respect of the use or operation of any other automobile;

“paid in”.—“paid in”, when applied to the capital stock of an insurer or to any shares thereof, means the amount paid to the insurer on its shares, not including the premium, if any, paid thereon, whether such shares are or are not fully paid;

“paid up”.—“paid up”, when applied to the capital stock of an insurer or to any shares thereof, means the capital stock or shares on which there remains no liability, actual or contingent, to the issuing insurer;

“pension fund association”.—“pension fund association” means a company, corporation or association incorporated before the year 1910, under or by virtue of any law of the Province of Quebec, for the purpose of providing a pension for those persons who have contributed to a fund therefor during a certain number of years, and includes any auxiliary funds incorporated for the purpose of guaranteeing the repayment of any sum to those who contributed to such pension fund during a certain

number of years, or for the purpose of assuring a life pension to those contributing a sum of money to such pension fund, or for these and similar purposes;

“plate glass insurance”.—“plate glass insurance” means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to plate, sheet or window glass, whether in place or in transit;

“policy”.—“policy” means the instrument evidencing a contract;

“premium”.—“premium” means the single or periodical payment under a contract for insurance, and includes dues, assessments, administration fees paid for the administration or servicing of such contract, and other considerations;

“premium note”.—“premium note” means an instrument given as consideration for insurance whereby the maker undertakes to pay such sum or sums as may be legally demanded by the insurer, but the aggregate of which sums does not exceed an amount specified in the instrument;

“property”.—“property” includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges and in respect of inability to occupy the insured premises, but only to the extent of express provision in the contract;

“property damage insurance”.—“property damage insurance” means insurance against loss of or damage to property that is not included in or incidental to some other class of insurance defined by or under this Act;

“public liability insurance”.—“public liability insurance” means insurance against loss or damage to the person or property of others that is not included in or incidental to some other class of insurance defined by or under this Act;

“rate”.—“rate”, in relation to automobile insurance, means all amounts payable under contracts of automobile insurance for an identified risk whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts, rebates and dividends.

“regulations”.—“regulations” means the regulations made under this Act;

“risk classification system”.—“risk classification system”, in relation to automobile insurance, means the elements used for the purpose of classifying risks in the determination of rates for a coverage or category of automobile insurance, including the variables, criteria, rules and procedures used for that purpose.

“salesperson”.—“salesperson” means a person who is employed by a licensed insurance agent or broker on a stated salary that is not supplemented by commission, bonus or any other remuneration to solicit insurance or transact, for a person other than himself, an application for a policy of insurance, or to act in the negotiation of such insurance or in negotiating its continuance or renewal, or collects and receives premiums on behalf of his employer only, but does not include a licensed insurance agent, broker or employee engaged solely in office duties for an agent or broker;

- “sick and funeral benefits”**.—“sick and funeral benefits” includes insurance against sickness, disability or death under which the moneys payable upon the happening of sickness, disability or death do not exceed the limits prescribed by section 372;
- “sickness insurance”**.—“sickness insurance” means insurance by which the insurer undertakes to pay insurance money in the event of sickness of the person or persons insured, but does not include disability insurance;
- “sprinkler leakage insurance”**.—“sprinkler leakage insurance” means insurance against loss of or damage to property through the breakage or leakage of sprinkler equipment or other fire protection system, or of pumps, water pipes or plumbing and its fixtures;
- “Superintendent”**.—“Superintendent” means the superintendent of insurance appointed under section 4;
- “theft insurance”**.—“theft insurance” means insurance against loss or damage through theft, wrongful conversion, burglary, house-breaking, robbery or forgery;
- “title insurance”**.—“title insurance” means insurance against loss or liability for loss due to the invalidity of the title to any property or of any instrument, or to any defect in such title or instrument;
- “upon proof”**.—“upon proof”, as applied to any matter connected with the licensing of an insurer or other person, means upon proof to the satisfaction of the Superintendent;
- “weather insurance”**.—“weather insurance” means insurance against loss or damage through windstorm, cyclone, tornado, rain, hail, flood or frost, but does not include hail insurance;
- “workers’ compensation insurance”**.—“workers’ compensation insurance” means insurance of an employer against the cost of compensation prescribed by statute for bodily injury, disability or death of a workman through accident or disease arising out of or in the course of his employment. S.O. 1993, c. 10, s. 2(1)–(3). S.O. 1994, c. 11, s. 336(1), (2); S.O. 1996, c. 21, s. 1.

PART I

ONTARIO INSURANCE COMMISSION

Organization

2. (1) Commission continued.—The Ontario Insurance Commission is continued under the name Ontario Insurance Commission in English and Commission des assurances de l’Ontario in French.

(2) Composition of Commission.—The Commission shall be composed of the Commissioner, the Superintendent and the Director.

(3) **Duties.**—It is the duty of the Commission to administer and enforce this Act and to supervise generally, and make recommendations to the Minister in respect of, the business of insurance in Ontario.

(4) **Powers.**—The Commission may exercise such powers as are necessary to carry out its functions under this Act.

3. (1) **Commissioner.**—The Lieutenant Governor in Council shall appoint a commissioner of insurance who shall carry out the duties and exercise the powers of the Commissioner under this Act and every other Act that assigns duties to or confers powers on the Commissioner.

(2) **Idem.**—The Commissioner is the chief executive officer of the Commission.

(3) **Acting Commissioner.**—If the Commissioner is absent or if there is a vacancy in the office of the Commissioner, such person as may be designated by the Commissioner shall act as and have all the powers of the Commissioner.

(4) **Delegation.**—The Commissioner may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation.

(5) **Idem.**—The Commissioner may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Commissioner relating to such hearings.

4. (1) **Superintendent.**—The Lieutenant Governor in Council shall appoint a superintendent of insurance who shall carry out the duties and exercise the powers of the Superintendent under this Act and every other Act that assigns duties to or confers powers on the Superintendent.

(2) **Idem.**—The Superintendent is the chief administrative officer of the Commission and shall carry out such duties respecting the administration and enforcement of this Act as may be assigned by the Commissioner.

(3) **Acting Superintendent.**—If the Superintendent is absent or if there is a vacancy in the office of the Superintendent, such person as may be designated by the Superintendent shall act as and have all the powers of the Superintendent.

(4) **Delegation.**—The Superintendent may delegate in writing any of his or her powers or duties, including duties assigned to the Superintendent by the Commissioner, to an employee of the Commission, subject to any limitation or condition set out in the delegation.

(5) **Idem.**—The Superintendent may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Superintendent relating to such hearings.

5. (1) **Employees.**—Such employees as are required for the purposes of the Commission may be appointed under the *Public Service Act*.

(2) **Professional assistance.**—The Commission may engage persons, other than those appointed under subsection (1), to provide professional, technical or other assistance

to the Commission and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

5.1 (1) Insurance Ombudsman.—The Commissioner shall appoint an employee of the Commission as Insurance Ombudsman.

(2) **Duties.**—The Insurance Ombudsman shall inquire into complaints about insurers' business practices.

(3) **Complaints.**—A person may submit a written complaint about an insurer's business practices to the Insurance Ombudsman if the person has submitted the complaint to the insurer and the complaint has not been resolved within a reasonable time.

(4) **Response.**—The Insurance Ombudsman shall give the insurer an opportunity to respond to any complaint submitted under subsection (3).

(5) **Authority of Insurance Ombudsman.**—After considering the complaint and any response, the Insurance Ombudsman may attempt to resolve the complaint or may recommend to the Superintendent that the Superintendent inquire into the complaint. S.O. 1996, c. 21, s. 2.

6. (1) Director of arbitrations.—The Lieutenant Governor in Council shall appoint a director of arbitrations who shall carry out the duties and exercise the powers of the Director under this Act.

7. (1) Committees.—The Minister shall appoint one or more committees for the purposes of this Act.

(2) **Name.**—The Minister shall assign a name to each committee.

(3) **Duties.**—Each committee shall,

(a) perform such functions as are assigned to the committee by the Minister or the Commissioner; and

(b) perform such other functions as are prescribed by the regulations.

(4) **Same.**—The Minister shall assign to one of the committees the function of recommending persons to conduct arbitrations under this Act. S.O. 1993, c. 10, s. 3; S.O. 1996, c. 21, s. 4.

8. (1) Arbitrators.—The Commissioner shall establish and maintain a roster of candidates chosen by the Commissioner from the persons recommended to conduct arbitrations under this Act by the committee appointed under section 7.

(2) **Appointment.**—The Director shall appoint arbitrators only from the roster of candidates. S.O. 1996, c. 21, s. 5.

9. Mediators.—The Commissioner may appoint employees of the Commission or other persons to act as mediators.

10. Repealed. S.O. 1996, c. 21, s. 6.

11. (1) Immunity.—No action or other proceeding for damages shall be instituted against any person acting under the authority of this Act or any Act listed in the Schedule

to this subsection for any act done in good faith in the performance or intended performance of the person's duty or in the exercise or intended exercise of the person's powers or for any alleged neglect or default in the performance or execution in good faith of the person's duties or powers.

SCHEDULE TO SUBSECTION (1)

1. *Compulsory Automobile Insurance Act.*
2. *Motor Vehicle Accident Claims Act.*
3. *Prepaid Hospital and Medical Services Act.*
4. *Registered Insurance Brokers Act.*

(2) **Crown liability.**—Notwithstanding subsections 5(2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

(3) **Testimony in civil proceedings.**—Except with the consent of the Commissioner, no person mentioned in subsection (1), other than the Commissioner, shall be required to testify in a civil proceeding, in a proceeding before the Commissioner or in a proceeding before any other tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1).

(4) **Idem.**—Except with the consent of the Minister, the Commissioner shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1).

(5) **Mediators.**—A mediator shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting any mediation conducted under this Act or respecting information obtained in the discharge of the mediator's duties under this Act.

(6) **Neutral evaluation.**—A person who performs an evaluation under section 280.1 shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting the evaluation or respecting information obtained in the discharge of the person's duties under this Act. S.O.1996, c. 21, s. 7.

12. Independence of Commissioner and others.—The Commissioner, the Superintendent, the Director and the employees of the Commission shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario.

12.1 (1) Priorities.—The Commission shall, not later than nine months before the start of each fiscal year, deliver to the Minister and publish in *The Ontario Gazette* a statement of the Commissioner setting out the proposed priorities of the Commission for the fiscal year in connection with the administration of this Act, the Acts referred to in

the Schedule to subsection 11(1) and such other Acts as may be prescribed by the regulations, together with a summary of the reasons for the adoption of the priorities.

(2) **Same.**—The Commission shall, at least 60 days before the publication date of the statement, publish a notice in *The Ontario Gazette* inviting interested persons to make written representations as to the matters that should be identified as priorities. S.O. 1996, c. 21, s. 8.

12.2 (1) Policy statements.—The Minister may issue policy statements on matters related to this Act, the Acts referred to in the Schedule to subsection 11(1) and such other Acts as may be prescribed by the regulations.

(2) **When effective.**—A policy statement takes effect on the day it is published in *The Ontario Gazette*.

(3) **Effect of statement.**—The Commissioner and the Superintendent shall have regard to the policy statements in making decisions. S.O. 1996, c. 21, s. 8.

13. (1) Annual report.—The Commissioner shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Commission.

(2) **Further reports.**—The Commissioner shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

(3) **Tabling of reports.**—The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Legislative Assembly if it is in session or, if not, at the next session.

14. (1) Assessment of insurers.—The Lieutenant Governor in Council may assess all insurers with respect to all expenses incurred and expenditures made by the Ministry of Finance in respect of the administration of this Act, the Acts referred to in the Schedule to subsection 11(1) and such other Acts as may be prescribed by the regulations, including all expenses incurred and expenditures made in the conduct of their affairs by the Commission and by the committees appointed under section 7.

(2) **Idem.**—If an assessment is made under subsection (1), the share of a particular insurer shall be determined in the manner prescribed by regulation.

(3) **Idem.**—The regulations made in respect of an assessment made under subsection (1) in respect of expenses and expenditures for dispute resolution under sections 242(b) to 242(f) may provide that the assessment may be based on such degree of usage of the dispute resolution system as may be provided in the regulations.

(4) **Insurer's duty to pay.**—An insurer shall pay the amount assessed against it.

(5) **Same.**—If an insurer fails to pay an assessment made under subsection (1), the Commissioner may suspend or cancel the insurer's licence.

(6) **Same.**—The Commissioner may revive the licence of an insurer whose licence was suspended or cancelled under subsection (5) if the insurer pays all amounts owing by the insurer under this section. S.O. 1996, c. 21, s. 9.

14.1 (1) Assessment of health system costs.—The Lieutenant Governor in Council may, in accordance with the regulations, assess all insurers that have issued motor

vehicle liability policies in Ontario for amounts prescribed by the regulations that are incurred by the Ministry of Health under an Act or program administered by that ministry.

(2) **Same.**—If an assessment is made under subsection (1), the share of a particular insurer shall be determined in the manner prescribed by regulation.

(3) **Insurer's duty to pay.**—An insurer shall pay the amount assessed against it.

(4) **Same.**—If an insurer fails to pay an assessment made under subsection (1), the Commissioner may suspend or cancel the insurer's licence.

(5) **Same.**—The Commissioner may revive the licence of an insurer whose licence was suspended or cancelled under subsection (4) if the insurer pays all amounts owing by the insurer under this section. S.O. 1996, c. 21, s. 10.

Decisions, Hearings and Appeals

15. (1) Orders.—The Commissioner shall determine matters before him or her by order and may make an order subject to such conditions as are set out in the order.

(2) **Interim orders.**—The Commissioner may make interim orders pending the final order in a matter before him or her.

16. (1) Proceedings before the Commissioner.—For a proceeding before the Commissioner, the Commissioner may,

- (a) make rules for the practice and procedure to be observed;
- (b) determine what constitutes adequate public notice;
- (c) before or during the proceeding, conduct any inquiry or inspection the Commissioner considers necessary;
- (d) in determining any matter, consider any relevant information obtained by the Commission in addition to evidence given at the proceeding, if he or she first informs the parties to the proceedings of the additional information and gives them an opportunity to explain or refute it.

(2) **Costs.**—The costs of and incidental to a proceeding before the Commissioner are in his or her discretion and may be fixed in any case at a sum certain or may be assessed.

(3) **Idem.**—In awarding costs, the Commissioner is not limited to the considerations that govern the award of costs in any court.

(4) **Idem.**—The Commissioner may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed.

(5) **Idem.**—The Commissioner may establish a scale under which such costs shall be assessed.

(6) **Idem.**—Costs awarded under this section may include the costs of the Commission, regard being had to the time and expenses of the Commission.

17. (1) Variation of decisions.—The Commissioner or the Superintendent, as the case may be, may reconsider and vary or revoke a decision or order made by him or her if he or she considers it advisable to do so.

(2) **No hearing.**—The Commissioner or the Superintendent, as the case may be, is not required to hold a hearing when reconsidering his or her decision, but he or she shall allow the parties to make written submissions.

18. (1) Appeal from Superintendent's decision.—A person affected by a decision of the Superintendent may appeal the decision to the Commissioner.

(2) **Request for appeal.**—A request for an appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the Superintendent's decision.

(3) **Hearing.**—The Commissioner shall hold a hearing of an appeal.

(4) **Parties.**—The parties to an appeal are the person who requests the appeal, the Superintendent and such other persons as the Commissioner may specify.

(5) **Power of the Commissioner.**—Upon hearing an appeal, the Commissioner may confirm, vary or rescind the decision appealed from or substitute his or her decision for that of the Superintendent.

19. (1) Reference hearings.—The Lieutenant Governor in Council may require the Commissioner to examine and report on any question related to insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing.

(2) **Parties.**—The Commissioner shall determine who may be a party to a reference hearing.

20. (1) Exclusive jurisdiction.—This section applies with respect to proceedings under this Act before the Commissioner, the Superintendent and the Director and before an arbitrator.

(2) **Idem.**—A person referred to in subsection (1) has exclusive jurisdiction to exercise the powers conferred upon him or her under this Act and to determine all questions of fact or law that arise in any proceeding before him or her and, unless an appeal is provided under this Act, his or her decision thereon is final and conclusive for all purposes.

(3) **Decisions, etc., not stayed.**—An application for judicial review and any appeal from an order of the court on the application does not stay the decision made under this Act.

(4) **Court may grant stay.**—Notwithstanding subsection (3), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the disposition of the judicial review or appeal.

21. Rules.—Subject to the regulations made under paragraph 25 of subsection 121(1), the Director may make rules for the practice and procedure to be observed in mediations under section 280, in performing evaluations under section 280.1, and in proceedings under this Act before the Director or an arbitrator. S.O. 1996, c. 21, s. 11.

22. (1) Power to summon witnesses, etc.—For the purpose of exercising the powers and performing their duties under this or any other Act, the Commissioner, the Superintendent, the Director and every arbitrator has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Ontario Court (General Division) for the trial of civil actions.

(2) Power to require evidence.—A person referred to in subsection (1) may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

(3) Employment of stenographer.—The evidence and proceedings in any matter before a person referred to in subsection (1) may be reported by a stenographer who has taken an oath before the person to report the evidence and proceedings faithfully.

(4) Oaths.—A person referred to in subsection (1) may administer and certify an oath required under this Act.

Administration

23. (1) Records of Superintendent.—The Superintendent shall keep the following books and records:

1. A register of all licences issued under this Act, in which shall appear the name of the insurer, the address of the head office, the address of the principal office in Canada, the name and address of the chief or general agent in Ontario, the number of the licence issued, particulars of the classes of insurance for which the insurer is licensed, and such other information as the Superintendent considers necessary.
2. A record of all securities deposited by each insurer with the Minister, naming in detail the several securities, their par value, their date of maturity and value at which they are received as deposit.

(2) Inspection.—The books and records required by this section to be kept shall be open to inspection at such times and upon payment of such fees as are prescribed by the regulations.

24. Records.—Records required under this Act to be prepared and maintained by the Commissioner or the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

25. (1) Annual publication in *The Ontario Gazette*, notice of licence.—The Superintendent shall cause to be published in *The Ontario Gazette* in July of each year a list of the insurers licensed at the date of the list, and shall from time to time cause notice of the licence of an insurer not theretofore licensed and notice of suspension or cancellation or revivor of licence to be given by publication in *The Ontario Gazette*.

(2) **Certificates.**—The Commission may issue a certificate,

- (a) stating that on a stated day a person was or was not licensed under this Act, or that the licence was renewed, suspended, revived, revoked or cancelled on a stated day;
- (b) stating that a copy of, or extract from, a document or thing in the custody of the Commission is a true copy of, or extract from, the original;
- (c) stating the amount payable to the Treasurer of Ontario under subsection 32(3) or (4);
- (d) stating the amount payable for an audit under subsection 101(4);
- (e) stating whether a document was served or delivered under this Act;
- (f) stating whether any document required under this Act was filed;
- (g) stating whether a document or notification was received or issued by the Commissioner, the Superintendent, the Director, an arbitrator or a mediator under this Act;
- (h) giving particulars of the custody of any book, record, document or thing;
- (i) stating when the facts upon which a proceeding for an offence are based first came to the knowledge of the Commissioner or the Superintendent.

(3) **Idem.**—The Commissioner or the Superintendent may sign certificates on behalf of the Commission.

26. (1) Official documents as evidence.—In this section, “official document” means a certificate, licence, order, decision, direction, inquiry or notice under this Act.

(2) **Idem.**—An official document that purports to be signed on behalf of the Commission shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or the position of the person appearing to have signed the official document.

(3) **True copies as evidence.**—A true copy certified by the Commission under clause 25(2)(b) is admissible in evidence to the same extent as and has the same evidentiary value as the document or thing of which it is a copy.

27. Right to a licence.—It is the duty of the Superintendent to determine the right of an insurer in Ontario to be licensed under this Act but nothing in this section affects the right of the Lieutenant Governor in Council or the Commissioner to suspend or cancel any licence in the exercise of his or her authority under this Act.

28. (1) Decision of Superintendent.—Every decision of the Superintendent upon an application for a licence shall be in writing and notice thereof shall be forthwith given to the insurer.

(2) **Certified copy.**—The insurer, or any person interested, is entitled, upon payment of the prescribed fee, to a certified copy of the decision.

29. Inquiries.—The Superintendent or a person designated by the Commissioner may direct to an insurer any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and the insurer shall answer promptly, explicitly and completely.

30. Right of access.—The Superintendent or a person designated by the Commissioner may at any reasonable time examine the books, securities, documents and things related to the business of an insurer, agent, adjuster or broker.

31. (1) Duty to furnish information.—Persons who are licenced under this Act, officers and agents of an insurer, the chief agent of an insurer that has its head office outside Ontario and other persons engaged in the business of insurance in Ontario shall on request furnish the Superintendent or a person designated by the Commissioner with full information,

- (a) relating to any contract of insurance issued by an insurer;
- (b) relating to any settlement or adjustment under a contract of insurance; or
- (c) respecting any activities related to the business of insurance.

(2) **Idem.**—An insured person shall, on request, furnish the Superintendent or person designated by the Commissioner with full information relating to any contract of insurance issued to the insured person or to any settlement or adjustment affecting the insured person under a contract of insurance. S.O. 1993, c. 10, s. 4.

32. (1) Examination of insurers.—Once each year or more frequently as the Superintendent may consider appropriate for all insurers or for a particular insurer, the Superintendent or a person appointed by the Superintendent,

- (a) shall examine an insurer's statement made under section 102;
- (b) may make such inquiries as are necessary to ascertain the insurer's condition and ability to meet its obligations as and when they become due; and
- (c) may make such inquiries as are necessary to ascertain whether the insurer has complied with the requirements of this Act applicable to its transactions.

(2) **Exception.**—Subsection (1) does not apply so as to require an examination of an insurer,

- (a) that is a mutual benefit society with fewer than 300 members; or
- (b) in respect of which the Superintendent adopts an examination by another government.

(3) **Preparation of abstracts, valuation.**—The Superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of an insurer and the insurer shall pay the Treasurer of Ontario for the cost of the preparation of the abstracts or the valuation upon receiving a certificate of the Commission stating the amount payable.

(4) **Expenses of examination.**—Where the office of an insurer at which an examination is made under this section is outside Ontario, the insurer shall pay the Treasurer

of Ontario for the cost of the examination upon receiving a certificate of the Commission stating the amount payable.

33. (1) Service of documents.—Unless otherwise provided in this Act or in the rules made under clause 16(1)(a), service of any document for the purpose of a proceeding before the Commissioner or Superintendent that may result in an order or decision affecting the rights or obligations of a person required to be licensed under this Act may be made,

- (a) on any person, by personal service on the person to be served;
- (b) on an insurer, by first class registered mail addressed to the insurer or its chief executive officer at the insurer's head office in Ontario as identified in the records of the Superintendent;
- (c) on a person who is not an insurer, by first class registered mail addressed to the person's last known address;
- (d) on any person, by leaving a copy of the document with the solicitor, if any, of the person to be served, or with an employee in the solicitor's office; or
- (e) on any person, by telephone transmission of a facsimile of the document in accordance with subsection (7).

(2) Service at place of residence.—Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

(3) Effective date of service.—Service by first class registered mail under subsection (1) and service at a person's place of residence under subsection (2) is effective on the seventh day after the document is mailed in accordance with subsection (1) or (2).

(4) [Repealed. S.O. 1993, c. 10, s. 5(2).]

(5) [Repealed. S.O. 1993, c. 10, s. 5(2).]

(6) Acceptance of service by a solicitor.—Service on a solicitor is not effective unless the solicitor endorses on the document or a copy of it an acceptance of service on behalf of his or her client and the date of the acceptance.

(7) Requirements for service by facsimile.—A document that is served by telephone transmission shall include a cover page indicating,

- (a) the sender's name, address and telephone number;
- (b) the name of the person to be served;

- (c) the date and time of transmission;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact in the event of transmission problems. S.O. 1993, c. 10, s. 5(1), (2).

34. (1) Deemed service.—Where an attempt is made to effect service under subsection 33(1) on an insurer or an agent, and for any reason service cannot be effected, the document may be served on the Superintendent and such service shall be deemed to be service on the insurer or agent.

(2) Method of service.—Service may be made on the Superintendent under subsection (1) by first class registered mail addressed to the Superintendent at the Superintendent's office, or by personal service on the Superintendent.

(3) Superintendent to forward document.—Where a document is served on the Superintendent under subsection (1), the Superintendent shall forthwith mail the document to the insurer or agent at the address for the insurer or agent contained in the records of the Superintendent.

35. (1) Service of notice or process on chief agent or Superintendent.—Where the head office of a licensed insurer is situated out of Ontario, notice or process in any action or proceeding in Ontario may be served upon the chief agent of the insurer in Ontario or, where no appointment of a chief agent is then in effect, upon the Superintendent and such service shall be deemed service upon the insurer in the case of a corporation and upon members of the insurer in the case of an unincorporated body or association.

(2) Insurer to file address.—Every licensed insurer shall file in the office of the Superintendent notice of a post office address to which any such notice or process may be forwarded by the Superintendent and shall from time to time notify the Superintendent of any change in the address so filed.

(3) Superintendent to forward notice or process.—The Superintendent shall forthwith after the receipt of any such notice or process forward it to the insurer by registered mail addressed in the manner last notified to him for this purpose by the insurer.

36. (1) Annual report.—The Superintendent shall prepare for the Minister, from the statements filed by the insurers and from any inspection or inquiries made, an annual report, showing particulars of the business of each insurer as ascertained from such statement, inspection and inquiries, and such report shall be printed and published forthwith after completion.

(2) Permissible investments.—In his annual report the Superintendent shall allow as assets only such of the investments of the several insurers as are authorized by this Act, or by their Acts or instruments of incorporation, or by the general Acts applicable to such investments.

(3) Superintendent's corrections of annual statements.—In his annual report the Superintendent shall make all necessary corrections in the annual statements made by all

licensed insurers as provided in this Act, and he is at liberty to increase or diminish the liabilities of such insurers to the true and correct amounts thereof as ascertained by him in the examination of their affairs at the head office thereof in Ontario, or otherwise.

(4) Appraisalment of real estate owned by insurer.—If it appears to the Superintendent, or if he has any reason to suppose, from the annual statements prepared and delivered to him by all insurers that the value placed by any insurer, incorporated and licensed in Ontario, upon the real estate owned by it or any parcel thereof is too great, he may either require such insurer to secure an appraisalment of such real estate by one or more competent valuers, or may himself procure such appraisalment at the expense of the insurer, and the appraised value, if it varies materially from the statement or return made by the insurer, may be substituted in the annual report of the Superintendent.

(5) Appraisalment of real estate held as security for loans.—In like manner, if it appears to the Superintendent, or if he has any reason to suppose, that the amount secured by mortgage or hypothec upon any parcel of real estate, together with the interest due and accrued thereon, is greater than the value of the parcel, or that the parcel is not sufficient for the loan and interest, he may procure an appraisalment thereof and, if from the appraised value it appears that the parcel is not adequate security for the loan and interest, he may write off the loan and interest a sum sufficient to reduce the loan to such an amount as may fairly be realizable from the security, in no case to exceed the appraised value, and he may insert the reduced amount in his annual report.

(6) Appraisalment of other investments.—In like manner, if it appears to the Superintendent, or if he has any reason to suppose, that the value of any other investment of the funds of the insurer is less than the amount of the value of the investments shown in the books of the insurer, he may make or cause to be made an appraisal of the security, and, if from the appraised value it appears that the value of the security as shown on the books of the insurer is greater than its true value as shown by the appraisal, he may reduce the book value of the security to such amount as may fairly be realizable from the security, in no case to exceed the appraised value, and he may insert the reduced amount in his annual report.

37. Publication by Commission.—The Commission may publish any information that the Commissioner, the Superintendent, or the Director considers to be in the public interest.

38. Superintendent to report on petition for authorization of court bonds.—Upon request by the Minister, the Superintendent shall prepare for the consideration of the Lieutenant Governor in Council a report upon the petition of an insurer, praying to have its bonds authorized by order in council for acceptance in lieu of personal or private suretyship pursuant to any Act of Ontario wherein or whereby the Lieutenant Governor in Council is empowered to authorize the giving or acceptance of securities or of the personal bonds of sureties, and in such report the Superintendent shall set out all material facts relating to the age, paid up capital, surplus of assets over liabilities, underwriting experience and generally such other information relating to the financial condition and standing of the insurer as, in his or her opinion, should govern the granting or refusal of the petition.

PART II

GENERAL PROVISIONS APPLICABLE TO INSURERS

39. (1) Application of Part.—This Part applies to insurance undertaken in Ontario and to all insurers carrying on business in Ontario.

(2) Undertaking insurance.—An insurer undertaking a contract of insurance that under this Act is deemed to be made in Ontario, whether the contract is original or renewed, except the renewal from time to time of life insurance policies, shall be deemed to be undertaking insurance in Ontario within the meaning of this Part.

(3) Carrying on business.—An insurer undertaking insurance in Ontario or that in Ontario sets up or causes to be set up a sign containing the name of an insurer, or that in Ontario maintains or operates, either in its own name or in the name of its agent or other representative, an office for the transaction of the business of insurance either in or out of Ontario, or that in Ontario distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, printed form or like document, or that in Ontario makes or causes to be made any written or oral solicitation for insurance, or that in Ontario issues or delivers any policy of insurance or interim receipt or collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance or inspects any risk or adjusts any loss under a contract of insurance, or that prosecutes or maintains in Ontario an action or proceeding in respect of a contract of insurance, or a club, society or association incorporated or unincorporated that receives, either as trustees or otherwise, contributions or moneys from its members out of which gratuities or benefits are paid directly or indirectly upon the death of its members, or any of them, shall be deemed to be an insurer carrying on business in Ontario within the meaning of this Act.

Licences

40. (1) Necessity for licence.—Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Commissioner and hold a licence under this Act.

(2) Prohibition re: licence.—No person shall carry on business as an insurer or engage in an act constituting the business of insurance in Ontario without a licence under this Act.

(3) Idem.—No insurer shall carry on business in Ontario as an insurer of a class of insurance that is not authorized by its licence under this Act.

(4) Prohibition against acting on behalf of unlicensed insurer.—No person in Ontario shall do or cause to be done any act or thing mentioned in subsection 39(3) on behalf of or as agent of an insurer that is not licensed under this Act.

(5) Exception.—The following shall not be deemed insurers within the meaning of this Act or required or entitled to be licensed as such:

1. Pension fund societies or employees' mutual benefit societies incorporated under the *Corporations Act*.
2. Corporations mentioned in paragraphs 3 and 4 of section 343.
3. A trade union in Ontario that under the authority of its incorporating Act or charter has an assurance or benefit fund for the benefit of its own members exclusively.
4. Mutual benefit societies whose memberships are confined to railway employees and that do not grant mortuary or funeral benefits.

(6) **Unauthorized insurance.**—No insurer that is incorporated in Ontario and licensed under this Act shall carry on or solicit business as an insurer in another jurisdiction unless it is authorized to do so under the laws of that jurisdiction.

41. Reinsurance with unlicensed insurer.—Subject to the regulations nothing in this Act prevents a licensed insurer who has lawfully effected a contract of insurance in Ontario from reinsuring the risk or part thereof with an insurer transacting business out of Ontario and not licensed under this Act.

42. (1) What insurers may be licensed.—Upon due application and upon proof of compliance with this Act, the Commissioner may issue a licence to undertake contracts of insurance and carry on business in Ontario to any insurer coming within one of the following classes:

1. Joint stock insurance companies.
2. Mutual insurance corporations.
3. Cash-mutual insurance corporations.
4. Fraternal societies.
5. Mutual benefit societies.
6. Companies duly incorporated to undertake insurance contracts and not within classes 1 to 5.
7. Reciprocal or inter-insurance exchanges.
8. Underwriters or syndicates of underwriters operating on the plan known as Lloyds.
9. Pension fund associations.

(2) **Effect of licence.**—A licence issued under this Act authorizes the insurer named therein to exercise in Ontario all rights and powers reasonably incidental to the carrying on of the business of insurance named therein that are not inconsistent with this Act or with its Act or instrument of incorporation or organization.

43. (1) Classes of insurance.—The Lieutenant Governor in Council may make regulations determining and defining classes of insurance for the purposes of this Act and of licences granted to insurers under this Act.

(2) **Licence to carry on insurance business.**—Subject to the provisions of the Parts of this Act that particularly relate to the classes of insurers mentioned in section 42, a licence may be granted to an insurer to carry on any one or more of the classes of insurance defined in section 1 or as are prescribed by the regulations made under sub-section (1) of this section.

(3) **Determination of classes of insurance by Superintendent.**—For the purposes of this Act, the Superintendent may determine the class or classes of insurance into which the circumstances or conditions in any case may bring any insurance granted or that may be granted in respect thereto, and the policy form for the class of insurance to be used thereunder.

(4) **Conditions.**—A licence may be issued subject to such limitations and conditions as may be prescribed by regulation.

44. (1) Membership in compensation association.—Where a compensation association has been designated by the regulations as a compensation association for any of the following classes of insurance,

- (a) automobile insurance;
- (b) boiler and machinery insurance;
- (c) fire insurance;
- (d) inland transportation insurance;
- (e) live stock insurance;
- (f) public liability insurance;
- (g) plate glass insurance;
- (h) property damage insurance;
- (i) sprinkler leakage insurance;
- (j) theft insurance;
- (k) weather insurance; or

(l) any such class or classes of insurance as may be designated in the regulations, every insurer while licensed to carry on that class of insurance and for 183 days after ceasing to be so licensed shall be deemed to be a member of the compensation association and shall be bound by the by-laws and memorandum of operation of the compensation association.

(2) **Assessments and levies.**—A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association, and, where the member fails to pay the assessment or levy within thirty days of the day the notice of the assessment or levy is mailed to the member,

- (a) the compensation association may claim the amount of the assessment or levy,

with interest, as a debt due from the member or if the insurer has ceased to be a member, from the former member; and

(b) the licence of the member to carry on insurance may be cancelled.

(3) **Non-application.**—Subsections (1) and (2) do not apply to,

(a) a mutual insurance corporation that is a member of the Fire Mutuals Guarantee Fund or such other insurers designated under the regulations as being adequately covered by some other plan of compensation;

(b) an insurer whose business is limited to that of reinsurance;

(c) an insurer named in an agreement entered into under section 120 as an insurer to whom subsections (1) and (2) do not apply; or

(d) a reciprocal or inter-insurance exchange.

45. (1) Conditions of automobile insurance licence.—A licence to carry on automobile insurance in Ontario is subject to the following conditions:

1. In any action in Ontario against the licensed insurer or its insured arising out of an automobile accident in Ontario, the insurer shall appear and shall not set up any defence to a claim under a contract made outside Ontario, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in Ontario and such contract made outside Ontario shall be deemed to include the statutory accident benefits referred to in subsection 268(1).

2. In any action in another province or territory of Canada, a jurisdiction in the United States of America or a jurisdiction designated in the *Statutory Accident Benefits Schedule* against the licensed insurer, or its insured, arising out of an automobile accident in that jurisdiction, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in Ontario, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability issued in that jurisdiction.

(2) **Penalty for breach.**—A licence may be cancelled when the holder commits a breach of condition as set out in subsection (1). S.O. 1993, c. 10, s. 6; S.O. 1996, c. 21, s. 12.

46. Scope of life insurance licence.—Every insurer licensed for the transaction of life insurance may, under the authority of its licence, unless the licence expressly provides otherwise,

(a) include in any policy of life insurance, in respect of the same life or lives insured thereby, disability insurance and accidental death insurance; and

(b) transact annuities of all kinds and insurance providing for the establishment of accumulation or endowment funds.

47. (1) Scope of insurance licence.—Every insurer licensed to carry on fire insurance may, subject to its Act of incorporation and subject to the restrictions prescribed by the licence, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles and any one or more perils falling within such other classes of insurance as are prescribed by the regulations.

(2) Insurance of automobiles.—An insurer licensed to carry on fire insurance may insure an automobile against loss or damage under a policy falling within Part IV.

48. (1) Capital requirements for joint stock co.—life insurance.—A licence shall not be granted to a joint stock insurance company not licensed before the 1st day of January, 1971 unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence to transact the business of life insurance, the company has paid up capital and surplus of not less than \$2,000,000, or such greater amount as the Commissioner in the circumstances may require, of which at least \$1,000,000 is paid up capital and at least \$500,000 is unimpaired surplus.

(2) Capital requirements for joint stock co.—insurance other than life.—A licence shall not be granted to a joint stock insurance company unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence to transact any insurance other than life insurance, the company has, in aggregate, a paid up capital and unimpaired surplus of not less than \$3,000,000 or such greater amount as the Commissioner in the circumstances may require.

(3) Capital requirements for other insurers—insurance other than life.—A licence shall not be granted to a mutual insurance corporation, a cash-mutual insurance corporation, an insurance company mentioned in paragraph 6 of subsection 42(1), or to an underwriter or syndicate of underwriters operating on the plan known as Lloyds, except upon proof that the net surplus of assets over all liabilities exceeds the amount fixed by subsection (2) for the paid in capital stock of joint stock insurance companies, and that such net surplus of assets over all liabilities together with the contingent liability of members, if any, exceeds the amount fixed by subsection (2) for the paid up capital and surplus of joint stock insurance companies for the respective classes of insurance mentioned therein.

(4) Exemption orders.—On the report of the Superintendent, the Lieutenant Governor in Council may by order exempt an insurer from the minimum capital requirements set out in subsection (2) or (3), as the case may be, if the insurer is offering its services only within Ontario or if the insurer is offering a specialized or limited service that in the opinion of the Lieutenant Governor in Council does not require the support of higher capital requirements.

(5) Idem.—An exemption under subsection (4) may be made subject to such conditions as the Lieutenant Governor in Council may impose.

(6) **Idem.**—A licence shall not be granted to a mutual insurance corporation, a cash-mutual insurance corporation, an insurance company mentioned in paragraph 6 of subsection 42(1), a reciprocal or inter-insurance exchange, or to an underwriter or syndicate of underwriters operating on the plan known as Lloyds, not licensed on the 30th day of June, 1971, except upon proof that the net surplus of assets over all liabilities exceeds the amount fixed by subsection (1) for the paid in capital stock of joint stock insurance companies, and that such net surplus of assets over all liabilities together with the contingent liability of members, if any, exceeds the amount fixed by subsection (1) for the paid up capital and surplus of joint stock insurance companies for the respective classes of insurance mentioned therein.

(7) **Application of subs. (3).**—Subsection (3) does not apply to a purely mutual insurance corporation incorporated under the law of Ontario and insuring only risks on the premium note plan or under the Fire Mutuals Guarantee Fund.

(8) **Application of other parts.**—A licence shall not be granted to an insurer except upon proof that it has complied with the provisions of this Act and the regulations applicable to it.

(9) **Licence for both fire and life.**—A licence shall not be granted to an insurer for the transaction of both fire and life insurance unless it maintains separate and distinct accounts, funds and securities in respect of its business of life insurance, and those funds and securities are available only for the protection of the holders of its policies of life insurance and are not liable for the payment of claims arising from any other class of insurance that it undertakes, and it complies with such other requirements as the Superintendent may impose for the purposes of this subsection.

(10) **Evidence by insurer when head office is outside Ontario.**—Where the head office of an applicant for a licence under this Act is situate out of Ontario, a licence shall not be granted except upon proof of its ability to provide for the payment at maturity of all its contracts, but the Superintendent may accept as sufficient the fact that it is licensed by any other government in Canada.

(11) **Licence of extra-provincial corporation.**—A licence shall not be granted to a corporation that is incorporated under the law of a province other than Ontario unless its head office and chief place of business is situate in that province. S.O. 1993, c. 10, s. 7.

49. Information preliminary to licence.—The Superintendent may require such notice of the application for a licence to be given by publication in *The Ontario Gazette* and elsewhere as he or she considers necessary.

50. (1) Documents to be filed by applicants for licence.—Before the issue of a licence to an insurer, such insurer shall file in the office of the Superintendent the following documents:

1. A certified copy of its Act or other instrument of incorporation or association and of its constitution and by-laws and regulations verified in a manner satisfactory to the Superintendent.

2. A certified copy of its last balance sheet and auditor's report thereon.
3. If the head office of the insurer is out of Ontario, notice of the place where the chief office of the insurer in Ontario is to be situate.
4. If the head office of the insurer is out of Ontario, a power of attorney from the insurer to an agent resident in Ontario.
5. Copies of all policy forms and forms of application for insurance proposed to be used by the insurer in Ontario.
6. Any evidence or documents required by other Parts of this Act.

(2) **Evidence.**—The applicant for a licence shall furnish such evidence as the Superintendent considers necessary that the requirements of this Act have been complied with and that the applicant is entitled to the licence applied for.

(3) **Paying cost of examination.**—When the Superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination upon receiving a statement thereof certified by the Superintendent.

51. Filing of changes in by-laws, etc.—Every licensed insurer shall file in the office of the Superintendent certified copies of every amendment, revision or consolidation of its Act or other instrument of incorporation or association and of its constitution, by-laws and regulations verified in a manner satisfactory to the Superintendent within thirty days after the passing or adoption of the amendment, revision or consolidation.

52. (1) Statement of expenses of organization.—Upon application being made for a licence under this Act by an insurer incorporated after the 1st day of January, 1925 under any general or special Act of Ontario, there shall be submitted to the Superintendent a sworn statement setting forth the several sums of money paid in connection with the incorporation and organization of the insurer, and such statement shall, in addition, include a list of all unpaid liabilities, if any, in connection with or arising out of the incorporation and organization.

(2) **To what limited.**—Until the licence is granted, no payments on account of expenses of incorporation and organization shall be made out of the moneys paid in by shareholders, except reasonable sums for the payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expense of travel, if any.

(3) **Conditions precedent to issue of licence.**—The Commissioner shall not issue the licence until he or she is satisfied that all the requirements of this Act and of the *Corporations Act* as to the subscriptions for shares in the capital of the insurer, the payment of money by shareholders on account of their subscriptions, the election of directors and other preliminaries have been complied with, and unless he or she is satisfied that the expenses of incorporation and organization, including any commission payable in connection with subscriptions for shares in the capital of the insurer, are reasonable.

53. (1) Right to licence.—An insurer that has applied for a licence and has complied with this Act and the *Corporations Act* is entitled to the licence.

(2) **Name of insurer.**—The Commissioner may refuse to license an insurer where the name of the insurer is,

- (a) the same as or similar to the name of another insurer and the assumption or use of the name in Ontario would be likely to deceive or mislead the public; or
- (b) if the name of the insurer is objectionable on any public grounds.

54. (1) Power of attorney of chief agent.—Every licensed insurer that has its head office outside Ontario shall file with the Superintendent an executed copy of a power of attorney from the insurer to a chief agent resident in Ontario.

(2) **Execution of power of attorney.**—The power of attorney shall be under the seal of the insurer, and shall be signed by the president and secretary or other proper officers of the insurer in the presence of a witness who shall make oath as to its due execution.

(3) **Authentication.**—The official positions held by the officers signing the power of attorney shall be verified by an oath of a person cognizant of the fact.

(4) **Contents of power of attorney.**—The power of attorney shall declare at what place in Ontario the chief agency of the corporation is and shall expressly authorize the chief agent to receive service of process in all actions and proceedings against the insurer in Ontario for any liability incurred by the insurer therein, and also to receive from the Superintendent all notices that the law requires to be given, or that it is thought advisable to give, and shall declare that service of process for or in respect of such liability on the chief agent is legal and binding on the insurer.

(5) **Authority conferred.**—The power of attorney may confer upon the chief agent any further or other powers that the insurer considers advisable.

(6) **Effect of copy as evidence.**—The production of a copy of the power of attorney certified by the Superintendent is sufficient evidence for all purposes of the power and authority of the person therein named to act on behalf of the insurer in the manner and for the purposes set forth in the certified copy.

(7) **Changes in chief agent.**—Where the insurer changes its chief agent in Ontario, it shall, within seven days of the appointment, file with the Superintendent a similar power of attorney, stating the change and containing a similar declaration as to service of process and notices.

(8) **Service of process thereafter.**—After the power of attorney is filed, any process in any action or proceeding against the insurer for liability incurred in Ontario may be validly served on the insurer upon its chief agent, but nothing in this section renders invalid service in any other modes in which the corporation may be lawfully served.

55. (1) Form of licence.—Subject to section 382, the licence shall be in such form or forms for the different classes of insurers as may be from time to time determined by the Commissioner, and shall specify the business to be carried on by the insurer.

(2) **Term of licence.**—The licence expires on the 30th day of June in each year, subject to renewal by the Superintendent on or before that date.

(3) **Conditions of licence.**—Any licence may be issued or renewed subject to such limitations or conditions as the Commissioner considers appropriate.

(4) **Variation of licence.**—Notwithstanding subsections (2) and (3), the Commissioner may at any time and in respect of any licence of an insurer,

- (a) reduce the term for which the licence was issued or renewed;
- (b) impose any conditions or limitations relating to the carrying on of the insurer's business that he considers appropriate; or
- (c) vary, amend or revoke any condition or limitation to which the licence is then subject,

but the Commissioner may not exercise any power granted under this subsection until he or she has given the insurer notice of the intention to exercise such power and has afforded the insurer a reasonable opportunity to be heard with respect thereto.

56. (1) Failure to pay undisputed claim.—Where written notice has been served on the Superintendent and upon proof of an undisputed claim arising from loss insured against in Ontario remaining unpaid for the space of sixty days after being due or of a disputed claim after final judgment in the regular course of law and tender of a legal, valid discharge being unpaid, the Commissioner may suspend or cancel the licence.

(2) **Revival of licence.**—The licence may be revived and the insurer may again transact business if, within six months after notice to the Superintendent of the failure of the insurer to pay an undisputed claim or the amount of a final judgment as provided in this section, such undisputed claim or final judgment upon or against the insurer in Ontario is paid and satisfied.

57. Failure to keep deposit unimpaired.—When the insurer fails to keep unimpaired the deposit, if any, hereinafter required, the Commissioner may suspend or cancel the licence of the insurer.

58. (1) Insufficiency of assets to be reported by Superintendent.—If the Superintendent, upon examination, or from annual statements, or upon other evidence, finds that the assets of an insurer are insufficient to justify its continuance in business or to provide proper security to persons effecting insurance with it in Ontario or that it has failed to comply with any provision of law or with its Act or instrument of incorporation or association, he shall so report to the Commissioner.

(2) **Suspension or cancellation.**—If the Commissioner, after consideration of the report and after a reasonable time has been given to the insurer to be heard by him, and upon such further inquiry and investigation as he thinks proper to make, reports to the Lieutenant Governor in Council that he concurs in the report of the Superintendent, the Lieutenant Governor in Council may suspend or cancel the licence of the insurer.

(3) **Notice.**—Notice of such suspension or cancellation shall be published in *The Ontario Gazette* and elsewhere as the Commissioner directs and thereafter any person transacting business on behalf of the insurer except for winding-up purposes is guilty of an offence.

(4) **Limited or conditional licence.**—Where the Superintendent has reported as provided in subsection (1), the Commissioner or the Lieutenant Governor in Council may direct the issue of such modified, limited or conditional licence as is considered necessary for the protection of persons in Ontario who have effected or effect contracts of insurance with the insurer.

(5) **Application to licensees of any government in Canada.**—Upon the suspension or cancellation of the licence of an insurer by any government in Canada, the Superintendent may suspend or cancel the licence of such insurer under this Act.

59. (1) Assets not accounted for.—Where it comes to the attention of the Superintendent that an insurer incorporated or organized under the laws of Ontario may not be able to account satisfactorily for any assets that appear on its books and, upon investigation, the Superintendent is satisfied that any such assets cannot be satisfactorily accounted for and that the circumstances so warrant, the Superintendent may immediately take possession and control of the assets of such insurer and maintain such control on his or her own initiative for a period of seven days and, with the concurrence of the Commissioner, for any longer period that the Commissioner may order for the purpose of his report under subsection 61(1).

(2) **Release of assets.**—The Superintendent may release any assets under his or her possession and control that he or she considers advisable for the purposes of the insurer.

60. (1) Additional requirements.—Subject to subsection (2), every insurer licensed under this Act,

- (a) shall submit with the annual statement required by subsection 102(1) an opinion by an actuary as to the adequacy of provisions made for unearned premiums, unpaid claims and claims adjustment expenses as of the end of the year covered by the annual statement; and
- (b) shall maintain assets, exclusive of any investments of the insurer that are not authorized by this Act or that were not authorized by law at the time of acquisition in an amount that bears not less than a reasonable relationship to the outstanding liabilities, premiums and loss experience of the insurer, all in accordance with such calculation as may be prescribed by the regulations.

(2) **Exceptions.**—This section does not apply to a mutual insurance corporation that is a member of the Fire Mutuals Guarantee Fund or to an insurer licensed to transact only,

- (a) the business of life insurance;
- (b) the business of accident and sickness insurance; or
- (c) the business of life insurance and the business of accident and sickness insurance.

(3) **Transition.**—Until the 15th day of June, 1992 the Superintendent,

- (a) may accept an opinion under clause (1)(a) from a person other than an actuary,

if the person has comparable experience and training and is approved by the Superintendent; and

- (b) may exempt any insurer from any requirement or requirements of subsection (1) or the regulations passed in relation thereto for a period not exceeding one year and such an exemption,
 - (i) may be subject to such conditions as the Superintendent may impose, and
 - (ii) may be made retroactive to such date as the Superintendent may specify.

61. (1) Report to Commissioner.—The Superintendent shall report to the Commissioner if the Superintendent is of the opinion that,

- (a) with respect to an insurer incorporated or organized under the laws of Ontario,
 - (i) the assets of the insurer are not sufficient to justify its continuance in business or to provide for its obligations,
 - (ii) the insurer is persistently failing to comply with section 60, or
 - (iii) the insurer is failing to comply with section 48; or
- (b) with respect to an insurer licensed in Ontario, there exists a state of affairs that is or may be prejudicial to the interests of persons who have contracts of insurance with the insurer.

(2) Notice to insurer.—After receiving a report under subsection (1), the Commissioner may give notice in writing to the insurer that the Commissioner intends to order that,

- (a) the insurer's licence be subject to such limitations or conditions as the Commissioner considers appropriate;
- (b) the insurer correct any failure or deficiency set out in the report within a time period specified by the Commissioner.

(3) Request for hearing.—The insurer may, within fifteen days after the notice is given, request the Commissioner in writing to hold a hearing before taking an action described in the notice.

(4) No request for hearing.—If no request for a hearing is made within the time permitted by subsection (3), the Commissioner may, if the Commissioner agrees with the opinion of the Superintendent expressed under subsection (1), make an order,

- (a) making the insurer's licence subject to such limitations or conditions as the Commissioner considers appropriate;
- (b) directing the insurer to correct any failure or deficiency set out in the report of the Superintendent within a time period specified by the Commissioner.

(5) Hearing.—If a hearing is requested within the time permitted by subsection (3), the Commissioner shall hold a hearing and, if the Commissioner agrees with the

opinion of the Superintendent expressed under subsection (1), may make an order referred to in subsection (4).

(6) **Interim order.**—If the Commissioner is of the opinion that the interests of the public may be adversely affected by a delay in making an order referred to in subsection (4), the Commissioner may make an interim order before the time for requesting a hearing has expired and, if a hearing is requested, before the hearing has been completed.

(7) **Interim order remains in force.**—Unless the Commissioner revokes an interim order,

- (a) the interim order remains in force indefinitely, if no hearing is requested within the time permitted by subsection (3); and
- (b) the interim order remains in force until the hearing is finally determined, if a hearing is requested within the time permitted by subsection (3).

(8) **Order to seize assets of insurer.**—If an insurer does not comply with an order or interim order directing the insurer to correct a failure or deficiency set out in the report of the Superintendent within the time period specified in the order, the Commissioner may, following a hearing, order the Superintendent to take possession and control of the assets of the insurer and the Superintendent shall deliver a copy of the order made under this subsection to an officer of the insurer.

(9) **Order without hearing.**—If the Commissioner is of the opinion that the interests of the public may be adversely affected by a delay in making an order referred to in subsection (8), the Commissioner may make the order without holding any hearing.

(10) **Insurers not incorporated in Ontario.**—If an order is made under subsection (8) in respect of an insurer that is not incorporated or organized under the laws of Ontario, the order extends only to those assets of the insurer that are in Ontario or that are under the control of the insurer's chief agent in Ontario. S.O. 1993, c. 10, s. 8.

62. (1) Power of Superintendent upon taking control.—If so ordered under section 61, the Superintendent shall take possession and control of the assets of the insurer and shall thereafter conduct its business and take such steps as in his opinion should be taken towards its rehabilitation, and for such purposes the Superintendent has all the powers of the board of directors of the insurer, and, without limiting the generality of the foregoing, the Superintendent may,

- (a) exclude the directors, officers, servants and agents of the insurer from the premises, property and business of the insurer; and
- (b) carry on, manage and conduct the operations of the insurer and in the name of the insurer preserve, maintain, realize, dispose of and add to the property of the insurer, receive the incomes and revenues of the insurer and exercise all the powers of the insurer.

(2) **Application to court.**—While the Superintendent has possession and control of the assets of an insurer under this section, the Commissioner may direct the Superintendent to apply to the court for an order for the winding up of the insurer under Part VI of the *Corporations Act*.

(3) **Appointment of managers.**—Where the Superintendent is in possession and control of the assets of an insurer and is conducting its business, he or she may appoint one or more persons to manage and operate the business of the insurer and,

- (a) each person so appointed is a representative of the Superintendent; and
- (b) the remuneration of any such person, other than an employee of the office of the Superintendent, shall be fixed by the Commissioner.

(4) **Relinquishing control.**—Whenever the Commissioner believes that an insurer whose assets are in the possession and control of the Superintendent meets all the requirements of this Act and that it is otherwise proper for the insurer to resume possession and control of its assets and the conduct of its business, the Commissioner may, in writing, direct the Superintendent to relinquish to the insurer the possession and control of its assets, and from and after the date specified in such direction the powers of the Superintendent under this section cease.

(5) **Where rehabilitation efforts futile.**—If the Commissioner, on the report of the Superintendent, considers that further efforts to rehabilitate an insurer whose assets are in the possession and control of the Superintendent would be futile, he or she may, in writing, direct the Superintendent to relinquish to the insurer the possession and control of its assets and from and after the date specified in such direction the powers of the Superintendent under this section cease.

(6) **Expenses of proceedings.**—The expenses of the Superintendent incurred in rehabilitation proceedings under this section and sections 59 and 61 shall be paid by all insurers licensed under this Act to carry on business of the same class or classes as the insurer who is the subject of the proceedings, and the share of each shall be the proportion of the expenses that the net premium income received from the insurer's policyholders in Ontario in its last preceding fiscal year bears to the total net premium income received from the policyholders in Ontario by all insurers of that class in their respective last preceding fiscal years.

(7) **Advisory committee.**—The insurers required to bear the said expenses of the Superintendent may appoint a committee of not more than six members to advise the Superintendent in respect of all matters pertinent to the rehabilitation of the insurer whose assets are in the possession and control of the Superintendent. S.O. 1993, c. 10, s. 9.

63. (1) Appeal.—Despite section 62, an insurer may appeal to the Divisional Court from any order made by the Commissioner under section 61 within thirty days after the delivery of a copy of the order to an officer of the insurer.

(2) **Stay.**—An order of the Commissioner under section 61 shall take effect immediately, but where there is an appeal, a judge of the Divisional Court may grant a stay until any appeal is disposed of.

- (3) **Material on appeal.**—The Commissioner shall certify to the Divisional Court,
- (a) the decision of the Commissioner;
 - (b) the report of the Superintendent to the Commissioner;

- (c) the record of any hearing; and
- (d) all written submissions by the appellant to the Superintendent or the Commissioner.
- (4) [Repealed. S.O. 1993, c. 10, s. 10(3).]

(5) **Order.**—Where an appeal is taken under this section, the court may by order direct the Superintendent to take such action as the court considers proper or refrain from taking any action specified in the order and the Superintendent shall act accordingly.

(6) **Further decision.**—Despite the determination of the appeal under this section, the Superintendent and the Commissioner have power to make any further reports and orders on new material or where there is a material change in the circumstances, and any such further order is subject to appeal under this section. S.O. 1993, c. 10, s. 10(1)-(4).

64. Revival of licence.—Where the licence of an insurer is suspended or cancelled under this Act, it may be revived if the insurer makes good the deposit, or the deficiency, as the case may be, to the satisfaction of the Commissioner.

65. Report on contravention of Act.—It is the duty of the Superintendent to report to the Commissioner any contravention of this Act by any insurer licensed thereunder, and thereupon the Commissioner may, in his or her discretion, suspend or cancel or refuse to renew the insurer's licence.

Withdrawal From Automobile Insurance

65.1 (1) Interpretation.—For the purpose of this section, an insurer is withdrawing from the business of automobile insurance if the insurer does anything that results or is likely to result in a significant reduction in the amount of gross premiums written by the insurer for automobile insurance in any part of Ontario, including any of the following things that have or are likely to have that result:

1. Refusing to process applications for automobile insurance.
2. Declining to issue, terminating or refusing to renew contracts of automobile insurance.
3. Refusing to provide or continue coverages or endorsements in respect of contracts of automobile insurance.
4. Taking actions that directly or indirectly result in termination of contracts between the insurer and the agents and brokers who solicit or negotiate contracts of automobile insurance on behalf of the insurer.
5. Reducing the ability of the agents or brokers to solicit or negotiate contracts of automobile insurance on behalf of the insurer.
6. Reducing the insurer's ability to act as a servicing carrier or ceasing to act as a servicing carrier under the Plan of Operation of the Facility Association.
7. Taking actions that directly or indirectly result in the termination of any contract between the insurer and the Facility Association.

8. Engaging in any activity or failure to act that is prescribed by the regulations.

(2) **Withdrawal from automobile insurance.**—An insurer shall not withdraw from the business of automobile insurance except in accordance with this section.

(3) **Procedure for withdrawal.**—An insurer that intends to withdraw from the business of automobile insurance shall file with the Commissioner a notice in the form provided by the Commissioner.

(4) **Time for notice.**—The notice shall specify the date that the insurer intends to begin to withdraw from the business of automobile insurance and shall be filed at least 180 days before that date.

(5) **Additional information.**—The Commissioner may require the insurer to provide such information, material and evidence as the Commissioner considers necessary in addition to the information, material and evidence required to be provided in the notice.

(6) **Authority to withdraw.**—The insurer may withdraw from the business of automobile insurance on or after the date specified in the notice under subsection (4).

(7) **Commissioner's powers.**—Despite subsection (6), the Commissioner may,

(a) authorize the insurer to withdraw from the business of automobile insurance before the date specified in the notice under subsection (4); or

(b) prohibit the insurer from withdrawing from the business of automobile insurance until a date specified by the Commissioner that is not later than ninety days after the date specified in the notice under subsection (4).

(8) **Application of regulations under subs. 121(1), par. 16.**—The Commissioner may order that the regulations made under paragraph 16 of subsection 121(1) do not apply to a class of contracts, coverages or endorsements specified by the Commissioner to which an insurer is a party. S.O. 1993, c. 10, s. 11.

Deposits

66. (1) Definition.—Subject to subsections (2), (3) and (4), “insurer” in sections 67 to 99 shall be deemed to include only joint stock insurance companies, cash-mutual insurance corporations, insurance companies mentioned in paragraph 6 of subsection 42(1), insurers that undertake life insurance except fraternal societies, and underwriters or syndicates of underwriters operating on the plan known as Lloyds.

(2) **Application to Canada registrants.**—Sections 66 to 71 do not apply to an insurer maintaining a reciprocal deposit with the government of another province under sections 94 to 99 or expressly exempted by order of the Lieutenant Governor in Council.

(3) **Application of ss. 67 to 99.**—Sections 67 to 99 do not apply to an insurer in respect of its business of marine insurance.

(4) **Application to Lloyds.**—Sections 67 to 99 do not apply to an underwriter or syndicate of underwriters that is a member of the society known as Lloyds, incorporated by the Imperial Statute, *Lloyds Act, 1871*.

(5) **Definition.**—In sections 67 to 99, “approved securities” means securities of or guaranteed by Canada or by any province of Canada, securities of an incorporated municipality of Canada, and such other securities as are authorized for the investment of trust funds under the law of the province in which they are offered for deposit and approved by the superintendent of insurance of the provinces of Canada in which the insurer is carrying on business.

67. (1) Amount of deposit.—Every insurer carrying on the business of insurance in Ontario shall, before receiving a licence under this Act, deposit approved securities with the Minister in the following amounts:

1. Where the insurer undertakes life insurance—\$50,000.
2. Where the insurer undertakes any one or more classes of insurance other than life,
 - i. in Ontario only—\$25,000.
 - ii. in Ontario and elsewhere—\$50,000.

(2) **Increase in amount of deposit.**—The Superintendent may require the deposit referred to in subsection (1) to be increased, either before or after granting the licence, to such amount as he considers necessary and for this purpose the Minister may require a reinsurer that reinsures all or part of the insurer’s business to deposit balances owing to the insurer with the Minister.

(3) **Excess deposit.**—An insurer may voluntarily make a deposit in excess of the amount prescribed by this section, but no part of a voluntary deposit shall be withdrawn without the sanction of the Minister.

68. (1) Value at which securities received.—The value of such securities shall be estimated at their market value, not exceeding par, at the time they are deposited.

(2) **Other securities.**—If any other than approved securities are offered as a deposit, the Minister may accept them on such valuation and on such conditions as he considers proper.

(3) **Further deposit if below market value.**—If the market value of any securities that have been deposited by an insurer declines below that at which they were deposited, the Minister may notify the insurer to make such further deposit as will ensure the accepted value of all the securities deposited by the insurer being equal to the amount that is required by this Act to be deposited.

(4) **Failure to make further deposit.**—On failure by the insurer to make such further deposit within sixty days after being called upon so to do, the Minister may suspend or cancel the licence of the insurer.

(5) **Title to securities.**—The property in any stock, bonds or debentures deposited with the Minister under this Act or any predecessor thereof is vested in the Minister by virtue of his office without any formal transfer while such stock, bonds or debentures form the whole or any part of the deposit required by this Act.

(6) **Interest upon deposits.**—So long as the conditions of this Act are satisfied and no notice of any final judgment against the insurer or order for its winding up or for the distribution of its assets or for administration of its deposit is given to the Minister, the insurer is entitled to receive the interest upon the securities forming the deposit.

69. **Substitution of securities.**—Where an insurer desires to substitute other approved securities for securities deposited, the Minister may permit the substitution to be made.

70. (1) **Withdrawal of deposit in certain cases.**—Where it is made to appear that an insurer, having made a deposit with the Minister, has made a deposit with any other government in Canada, the insurer is entitled, with the sanction of the Lieutenant Governor in Council, to withdraw the deposit with the Minister.

(2) **Withdrawal of excess deposit.**—If at any time it appears that an insurer has on deposit with the Minister under this Act a sum in excess of the prescribed amount, the Minister, upon being satisfied that the interest of persons effecting contracts of insurance with the insurer in Ontario will not be prejudiced thereby, and upon giving such notice in *The Ontario Gazette* and taking such other precautions as he considers expedient, may authorize the withdrawal of the amount of such excess or such portion thereof as he considers advisable, but the Minister may authorize such withdrawal without giving notice.

71. (1) **Return of deposit on ceasing to do business.**—An insurer that has ceased to transact business in Ontario and desires to obtain a return of its deposit may give written notice to that effect to the Superintendent, and shall publish in *The Ontario Gazette* a notice that it has applied to the Lieutenant Governor in Council for the return of its deposit, calling upon all claimants, contingent or actual, who object to the return to file their objections with the Superintendent on or before a day named in the notice, which shall not be less than three months after the first publication of it.

(2) **Filing list of outstanding contracts.**—Upon giving the notice to the Superintendent, the insurer shall file with him or her a list of all its outstanding contracts of insurance, including contracts in respect of which claims have accrued.

(3) **Return of deposit on proof of discharge of contracts.**—After the day named in the notice, if the Minister is satisfied that the insurer has obtained a discharge of all such outstanding contracts, the Lieutenant Governor in Council may direct that the deposit be returned.

(4) **Return of part of deposit.**—If the Minister is not satisfied that all such contracts have been discharged, the Lieutenant Governor in Council may direct that a sufficient amount be retained to meet the contracts unprovided for and that the remainder of the deposit be returned, and thereafter, from time to time as such contracts lapse or proof is adduced that they have been satisfied, further return of the deposit may be directed by the Lieutenant Governor in Council.

72. Definitions.—

In sections 73 to 99,

“insured person”. — “insured person” means a person who enters into a subsisting contract of insurance with an insurer and includes,

- (a) a person insured by a contract whether named or not; and
- (b) a person to whom or for whose benefit all or part of the proceeds of a contract of insurance is payable; and
- (c) a person entitled to have insurance money applied toward satisfaction of his judgment in accordance with section 258;

“loss”. — “loss” includes the happening of an event or contingency by reason of which a person becomes entitled to a payment under a contract of insurance of money other than a refund of unearned premiums;

“Ontario contract”. — “Ontario contract” means a subsisting contract of insurance that,

- (a) has for its subject,
 - (i) property that at the time of the making of the contract is in Ontario or is in transit to or from Ontario, or
 - (ii) the life, safety, fidelity or insurable interest of a person who at the time of the making of the contract is resident in Ontario or of an incorporated company that has its head office in Ontario; or
- (b) makes provision for payment thereunder primarily to a resident of Ontario or to an incorporated company that has its head office in Ontario;

“reciprocal deposit”. — “reciprocal deposit” means a deposit of an insurer held pursuant to section 95 or 96;

“reciprocating province”. — “reciprocating province” means a province that has been declared to be a reciprocating province under paragraph 1 of subsection 95 (1) or subsection 96 (1) with respect to the deposit of a particular insurer.

73. (1) Deposit may be used to reinsure Ontario contracts. — Notwithstanding anything hereinafter contained but subject to subsection (2), at any time before the granting of an order for administration of a deposit and upon the recommendation of the Superintendent certifying that such action is necessary or desirable for the protection of policy-holders entitled to share in the proceeds of the deposit, the Minister may use all or any part of the deposit for the purpose of reinsuring all or any part of the Ontario contracts.

(2) Consent required in case of reciprocal deposit. — A reciprocal deposit may be used for purposes of reinsurance in the manner and to the extent agreed upon by the superintendents of insurance of the reciprocating provinces and not otherwise.

74. (1) Administration of deposit. — The deposit made by an insurer under this Act is subject to administration in the manner hereinafter provided.

(2) Persons for whom deposit administered. — Subject to sections 95 and 96, the deposit shall be held and administered for the benefit of all insured persons under Ontario contracts and they are entitled to share in the proceeds of the deposit.

(3) **Claims entitling insured to share in deposit.**—An insured person under an Ontario contract is entitled to share in the proceeds of the deposit in respect of,

- (a) a claim for a loss that is covered by the contract and that occurred before the termination date fixed under section 79 of this Act or section 220 of the *Corporations Act*; or
- (b) a claim for refund of unearned premiums, except in the case of life insurance; or
- (c) a claim for payment of the legal reserve in respect of the contract in the case of life insurance; or
- (d) claims under both clauses (a) and (b).

75. (1) Application for administration of deposit.—An application for administration of a deposit shall be made by originating notice of motion to a judge of the Ontario Court (General Division).

(2) **Where application to be made.**—The application shall be made in the county or district,

- (a) in which the head office of the insurer is situate; or
- (b) in which the chief office of the insurer in Ontario is situate if its head office is out of Ontario.

76. (1) Application by Superintendent.—With the approval of the Minister, the Superintendent may make application for administration at any time when, in his or her opinion, it is necessary or desirable for the protection of the insured person entitled to share in the proceeds of the deposit.

(2) **Idem.**—In the case of a reciprocal deposit held in Ontario, the superintendent of insurance of a reciprocating province may make application for administration of the deposit.

(3) **Application by insured persons.**—An insured person entitled to share in the proceeds of a deposit may make application for administration of the deposit upon producing evidence,

- (a) that the person has served the Superintendent with a notice in writing of the person's intention to make application if the Superintendent or the superintendent of insurance of a reciprocating province does not apply; and
- (b) that sixty days have elapsed since the service of the notice and that no application for administration of the deposit has been made.

(4) **Duty of Superintendent in case of reciprocal deposit.**—In the case of a reciprocal deposit, if the Superintendent is served with a notice as provided in subsection (3), he or she shall forthwith notify the superintendent of insurance of each reciprocating province that he has been so served.

77. Service of notice of motion.—The applicant for administration of the deposit shall serve the originating notice of motion at least ten days before the date specified in the notice for the making of the application,

- (a) upon the insurer or, where the insurer is in liquidation, upon the liquidator of the insurer; and
- (b) upon the Superintendent; and
- (c) in the case of a reciprocal deposit, upon the superintendent of insurance of each reciprocating province.

(2) **Order for administration.**—An applicant for administration is entitled to an order for administration upon proof,

- (a) that the licence of the insurer has been cancelled, and that its assets are insufficient to discharge its outstanding liabilities; or
- (b) that an order has been made for the winding up of the insurer; or
- (c) that the insurer has failed to pay,
 - (i) an undisputed claim for sixty days after it has been admitted, or
 - (ii) a disputed claim after final judgment and tender of a valid discharge,

if the claim arose under a contract of insurance in respect of which the deposit is subject to administration.

78. (1) Receiver, appointment.—Upon granting an order for administration, the court shall appoint a receiver to administer the deposit.

(2) **Provisional liquidator, appointment.**—Where a provisional liquidator or a liquidator has been appointed under this Act or the *Corporations Act* or a liquidator has been appointed under the *Winding-up Act* (Canada) to wind up a company that has made a deposit under this Act, the court may appoint the provisional liquidator or liquidator as the receiver to administer the deposit.

(3) **Deposit, how to be administered.**—Thereupon the provisional liquidator or the liquidator shall administer the deposit for the benefit of the insured persons entitled to share in the proceeds thereof in accordance with the provisions of and the priorities set out in this Act.

79. (1) Termination date.—Where a termination date has not been fixed by a provisional liquidator or a liquidator under section 220 of the *Corporations Act*, forthwith after his appointment, the receiver shall fix a termination date for the subsisting contracts of insurance of the insurer, and on and after that date coverage and protection under the Ontario contracts cease and determine and the insurer is not liable under any such contract for a loss that occurs after that date.

(2) **Termination of Ontario contracts on date fixed by receiver in another province.**—Where a receiver administering a reciprocal deposit held in another province for the benefit of the insured persons under Ontario contracts fixes a termination date for the subsisting contracts of the insurer, on and after that date coverage and protection under the Ontario contracts cease and the insurer is not liable under any such contract for a loss that occurs after that date.

(3) **When termination date to be fixed.**—The termination date shall not be less than twenty and not more than forty-five days after the date upon which the receiver was appointed.

(4) **Notice of termination date.**—The receiver shall forthwith give notice in writing of the termination date to the Superintendent and, in the case of a reciprocal deposit, to the superintendent of insurance of each reciprocating province.

(5) **Publication of notice.**—The receiver shall forthwith publish notice of the termination date in *The Ontario Gazette* and in the official gazette of each reciprocating province and in such newspapers circulating in those provinces as the receiver in his opinion considers advisable in order to give reasonable notice of the termination date.

80. (1) Notice to insured persons under Ontario contracts.—The Superintendent, upon receiving notice of a termination date fixed by the receiver administering the deposit of an insurer, shall forthwith take such action as he or she considers advisable in the interests of the insured persons under Ontario contracts to give notice of that date to them as soon as is reasonably possible.

(2) **List of insured persons.**—Without restricting the generality of subsection (1), the Superintendent may forthwith require each agent of the insurer in Ontario to forward to him or her a list showing the name and address of each person who has entered into a contract of insurance with the insurer of whom the agent has a record.

(3) **Notice to persons on list.**—On receipt of each list forwarded by an agent, the Superintendent may send by ordinary mail to each person whose name appears on the list a notice containing,

- (a) the termination date fixed by the receiver;
- (b) the name and address of the receiver to whom particulars of claims for loss and claims for refund of unearned premiums should be submitted; and
- (c) such other information as the Superintendent considers advisable.

(4) **Publication of contents of notice.**—The Superintendent in his or her discretion may publish, broadcast or otherwise communicate or distribute the information contained in the notice, either generally or in any particular area or case, in such manner and by such means as he or she considers best suited to convey the information to the insured persons as soon as is reasonably possible having regard to all the circumstances.

81. Duty of receiver on appointment.—Forthwith after being appointed, the receiver shall,

- (a) call either upon the insurer or its agent or liquidator to furnish a list of all insured persons who are entitled to share in the proceeds of the deposit; and
- (b) call upon all insured persons who are entitled to share in the proceeds of the deposit to file their claims if they have not already done so.

82. Powers of referee exercisable by receiver.—The court, by the order appointing a receiver or by any subsequent order, may authorize the receiver to exercise, in respect

of the accounts of the insurer, all or any of the powers that a referee in a proceeding in the Ontario Court (General Division) would have if he or she were taking an account of the claims against the deposit, and every receiver so authorized has those powers as well as all other powers enjoyed by a receiver appointed under an order of the court.

83. (1) Application by receiver for order for sale of securities.—The receiver may apply to the court from time to time for an order authorizing the receiver,

- (a) to sell or realize upon all or part of the securities comprised in the deposit of the insurer; and
- (b) to pay from the proceeds thereof the costs of the administration of the deposit, including salaries of office staff, office expenses, the fee for the services of the receiver, fees and disbursements to adjusters and solicitors, and such other costs and expenses as the court considers proper.

(2) Notice of application.—The court may require the receiver to give such notice of the application in such manner as the court directs.

(3) Making of order.—After hearing the application, the court may make the order and may require the receiver to comply with such conditions as the court directs.

84. Priorities in payment of proceeds of deposit.—The proceeds of the deposit are payable,

- (a) first, in payment of the receiver and of all costs and expenses incurred by the receiver in the administration of the deposit and in payment of the remuneration, costs and expenses of the provisional liquidator as ordered by the Minister under section 216 of the *Corporations Act*;
- (b) second, in payment of the insured persons who are entitled to share in the proceeds of the deposit in accordance with the priorities set out in section 85.

85. (1) Priority of loss claims.—Except in the case of life insurance, each insured person who claims in respect of a loss covered by the contract that occurred before the termination date fixed under section 79 of this Act or section 220 of the *Corporations Act* is entitled to receive payment of his approved or settled claim in full in priority to the insured persons who claim in respect of refunds of unearned premiums.

(2) Priority of unearned premium claims.—Subject to subsection (1), an insured person who claims in respect of a refund of unearned premiums may claim such part of the premium paid as is proportionate to the period of the person's contract unexpired,

- (a) at the termination date fixed by the receiver under section 79 of this Act or fixed by the provisional liquidator or the liquidator under section 220 of the *Corporations Act*; or

(b) at the date the insured person cancelled the contract,
whichever is the earlier date.

(3) Priority of life insurance claims.—In the case of life insurance, each insured person who has a claim for a loss covered by the contract that occurred before the

termination date fixed under section 79 of this Act or section 220 of the *Corporations Act* ranks in the distribution of the proceeds of the deposit for the approved or settled amount of the claim *pari passu* with insured persons under unmaturing life insurance contracts.

(4) **Claim under unmaturing life policy.**—An insured person under an unmaturing life insurance contract is entitled to the full amount of the legal reserve in respect of his contract determined by the receiver according to the valuation thereof approved by the Superintendent under this Act.

86. (1) Action of receiver on receipt of claims.—Where an insured person has filed a claim for a loss covered by the contract that occurred before the termination date fixed under section 79 of this Act or section 220 of the *Corporations Act*, the receiver shall inquire into the claim and,

- (a) may approve the claim, if a final judgment has been obtained against the insurer in respect thereof; or
- (b) may approve the claim, if it has been adjusted or settled by the insurer or by the receiver at an amount that in his opinion the claimant is reasonably entitled to receive; or
- (c) may refuse to approve the claim or the amount thereof.

(2) **Appeal from receiver.**—An appeal lies to the Divisional Court from any decision of the receiver, if taken within thirty days from the date on which the person appealing received notice of the decision.

(3) **Manner of appeal.**—Notice of the appeal shall be served on the receiver, and the court may summarily determine the matter or may direct an issue to be tried or may make such other order as the court considers proper.

87. (1) List of persons entitled to share in deposit.—The receiver shall prepare a list showing the names of the persons who appear by the books and records of the insurer or otherwise to be entitled to share in the proceeds of the deposit.

(2) **Schedule of approved claims for losses.**—The receiver shall prepare and attach to the list a schedule of approved claims for losses of persons whose names appear on the list showing in respect of each approved claim,

- (a) the name and address of the claimant;
- (b) the particulars of the contract of insurance upon which the claim is based;
- (c) whether the claim was reduced to judgment or was adjusted or settled; and
- (d) the amount to which the claimant is entitled.

(3) **Schedule of unapproved claims for losses.**—The receiver shall prepare and attach to the list a schedule of unapproved claims for losses of persons whose names appear on the list showing in respect of each claim,

- (a) the name and address of the claimant;

- (b) the particulars of the contract of insurance upon which the claim is based;
- (c) the amount for which the claim is made or the amount estimated by the receiver as the probable maximum amount that will be payable under the contract in respect of that loss.

(4) **Schedule of unearned premiums.**—Except in the case of life insurance, the receiver shall prepare and attach to the list a schedule of unearned premiums refundable showing in respect of each person whose name appears on the list and who is entitled to a refund,

- (a) the person's name and address;
- (b) the particulars of the contract of insurance in respect of which the unearned premium is refundable;
- (c) the date on which the policy was terminated either by the receiver under section 79 of this Act or by the provisional liquidator or the liquidator under section 220 of the *Corporations Act*, or was cancelled by the insured person; and
- (d) the amount of the unearned premium as calculated by the receiver under subsection 85(2).

(5) **Schedule of legal reserves on life policies.**—In the case of life insurance, the receiver shall prepare and attach to the list a schedule of contract legal reserves showing in respect of each person whose name appears on the list and who is entitled to claim for the legal reserve in respect of the person's contract,

- (a) the person's name and address;
- (b) the particulars of the contract of insurance in respect of which the legal reserve is payable; and
- (c) the amount of the legal reserve calculated by the receiver under subsection 85(4).

88. (1) Application for order for payment on account of claims.—Upon completion of the schedules and after having paid or provided reasonable reserves out of the deposit to pay the amounts payable under clause 84(a), the receiver may apply to the court for an order authorizing the payment of such aggregate sum as may be fixed by the court on account of the amounts payable under clause 84(b).

(2) **Provision for payment of claims.**—Except in the case of life insurance, the receiver shall divide the sum mentioned in subsection (1) so as to provide for payment of the claims for losses in full or, if the sum is inadequate, *pro rata* on account of,

- (a) the approved claims for losses set out in the schedule of approved claims for losses; and
- (b) the unapproved claims for losses set out in the schedule of unapproved claims for losses,

and shall distribute the part referred to in clause (a) at such time or times as the receiver may determine to the persons entitled thereto and shall retain the part referred to in clause (b) for distribution from time to time as the unapproved claims are approved.

(3) Payment of unearned premiums.—Except in the case of life insurance, if there appears to be a surplus remaining after the receiver has paid or retained a sum that, in his opinion, is reasonably adequate to pay in full all claims for losses referred to in subsection (2), the receiver shall divide the surplus so as to provide for payment of all unearned premiums in full or, if it is inadequate, among the persons entitled to a refund of unearned premiums in proportion to the amounts payable as set out in the schedule of unearned premiums refundable.

(4) Payments of claims in case of life insurance.—In the case of life insurance, the receiver shall divide the sum fixed under subsection (1) so as to provide for payment of the following amounts in full or, if the sum is inadequate, *pro rata* on account of,

- (a) the approved claims for losses set out in the schedule of approved claims for losses;
- (b) the unapproved claims for losses set out in the schedule of unapproved claims for losses;
- (c) the full amount of the legal reserve in respect of each unmaturing life insurance contract as set out in the schedule of contract legal reserves,

and shall distribute the parts referred to in clauses (a) and (c) at such time or times as the receiver may determine to the persons entitled thereto and shall retain the part referred to in clause (b) for distribution from time to time as the unapproved claims are approved.

89. Payment of delayed claims.—If a claim in respect of a loss that occurred before the termination date is filed after the receiver has applied to the court under subsection 88(1) and before the final order of the court discharging the receiver, the claimant is entitled to share in the distribution of the moneys remaining in the hands of the receiver upon proof of the claim and upon such terms and conditions as the court may direct.

90. Application to court for direction.—The receiver administering a deposit may apply to the court at any time on summary application for directions or advice pertaining to any matter arising in the administration of the deposit.

91. Submission by receiver of final accounts.—Upon the completion of the distribution of the proceeds of the deposit, the receiver shall submit final accounts to the court and the court, on the passing thereof, may make an order approving the accounts and discharging the receiver.

92. Claims remaining unpaid after distribution of deposit.—If a claim is made after the completion of the distribution of the proceeds of the deposit and the discharge of the receiver or if there is a claim against the insurer by an insured person not fully paid by the distribution of the proceeds of the deposit, the claimant is not barred from any recourse the claimant may have against the insurer, and the claim is a first lien or charge

on the assets of the insurer in winding up as provided in subsection 218(2) of the *Corporations Act*.

93. Certain persons not entitled to share in proceeds of deposit.—A person who holds security for his claim under a contract of insurance, or who is entitled to share in the administration of a fund deposited with the government of any other province for the protection of persons resident in that province, is only entitled to share in the administration of the Ontario deposit if he abandons such special security and releases his claim upon any other government deposit.

94. (1) Definition.—In sections 95 and 96, the expression “contracts”, in relation to any other province of Canada, has the meaning assigned to it by the Act of that province under which insurers are licensed to carry on the business of insurance.

(2) Application of ss. 95, 96.—This section and sections 95 and 96 are applicable notwithstanding that the insurer is or may become licensed in one province for classes of insurance different from those for which it is or may become licensed in another province.

(3) Conflict.—Sections 95 and 96 prevail over any other provisions of this Act to the extent that they are inconsistent with such other provisions.

95. (1) Reciprocal deposits.—Where an insurer has its head office for Canada in Ontario and makes a deposit under this Act for purposes of this section by virtue where of the insurer will not be required to make a deposit in another province in which it is or may become licensed to undertake insurance, the following provisions are in effect:

1. Order prescribing amount of deposit and reciprocating provinces.—The amount of the deposit to be made and maintained by the insurer shall be fixed by order of the Lieutenant Governor in Council and the order shall declare what provinces are reciprocating provinces with respect to that insurer’s deposit.
2. Deposit as security for contracts.—The deposit shall be held and administered as security *pari passu* for the Ontario contracts of the insurer and for its contracts in any reciprocating province.
3. Certificate of Superintendent as to deposit.—The Minister shall, upon the request of the official who issues or proposes to issue a licence to the insurer in another province, certify under his or her hand that the deposit is held in the manner provided by paragraph 2, and the Superintendent shall forward the certificate to that official and a copy to the superintendent of insurance in each province.
4. Further deposit.—Where, with respect to the outstanding contracts of the insurer, it appears to the Superintendent from the annual statement under section 102 or any examination of the affairs of the insurer that a further deposit for the purposes of this section is necessary, or where it appears to the superintendent of insurance for another province in which the insurer is licensed from any annual report made to him or her by the insurer or any examination to the affairs of the insurer that a further deposit for the purposes of this section is necessary

and such superintendent requests the Superintendent to obtain a further deposit, the insurer shall forthwith deposit such further sums as the Lieutenant Governor in Council fixes.

5. Transfer of deposit to Minister of Finance.—If the insurer obtains a certificate of registration from the Government of Canada extending to this or another province and as a registrant makes a deposit under the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada), the Minister may, on the request of the insurer, authorize the Treasurer of Ontario to deliver to the insurer or to transfer to the Minister of Finance for Canada all or any part of such deposit as the Minister thinks fit having regard to the extent of the certificate of registration, and the Superintendent shall forthwith give notice of the delivery or transfer to the superintendent of insurance of each reciprocating province.
6. Notice of suspension or cancellation of licence.—Where the licence of the insurer is suspended or cancelled under this Act, the Superintendent shall forthwith give notice to the superintendent of insurance in each province.
7. Cessation of business in Canada.—Where the insurer ceases to carry on insurance business in Canada and its deposit may be withdrawn under this Act, the Superintendent shall notify the superintendent of insurance in each province, and all claims and liabilities arising in any such province shall be verified by the superintendent of insurance of that province and a statement thereof communicated to the Superintendent.
8. Cessation of business in reciprocating province.—Where the insurer ceases to transact business in or its licence is suspended or cancelled in a reciprocating province and notice thereof is given to the Superintendent, the Minister and the Superintendent, upon the request of the superintendent in the reciprocating province, may take any action that could be taken if the insurer ceased to transact business in or its licence was suspended or cancelled in Ontario.

(2) **Change of location of head office and transfer of deposit.**—The insurer shall not change the location of its head office to another province without the consent of the Minister, but, where the Minister so consents, he or she may authorize the Superintendent to transfer the insurer's deposit to the minister responsible for the deposit in that province or to the insurer, as the minister in that province requests, and the Superintendent shall forthwith give notice of any change or transfer to the superintendent of insurance of each reciprocating province.

96. (1) Exemption of insurer with head office for Canada in another province.—Where an insurer has its head office for Canada in another province and there makes a deposit of such amount as is fixed by the proper authority in that province, and under the laws of that province the deposit is held as security *pari passu* for its Ontario contracts and its contracts in every reciprocating province, the Minister, upon receipt of a certified copy of an order of the lieutenant governor in council of the province in which the deposit is made fixing the amount of the deposit and declaring that Ontario is a

reciprocating province with respect to that insurer's desposit, and upon receipt of the consent of the insurer to its deposit being so held, shall exempt the insurer from the provisions of this Act requiring it to make and maintain a deposit.

(2) **Notice of ceasing to transact business.**—Where the insurer ceases to transact business in or its licence is suspended or cancelled in Ontario, the Superintendent shall forthwith give notice thereof to the superintendent of insurance of the province in which the reciprocal deposit is held and to the superintendent of insurance of each other reciprocating province.

(3) **Notice to insured persons under Ontario contracts.**—Where an order is made for the administration of a reciprocal deposit held in another province under subsection (1), the Superintendent, as soon as is reasonably possible after receipt of notice of the termination date fixed by the receiver, shall proceed pursuant to section 80 to give the notice required by that section to the insured persons under the Ontario contracts.

(4) **Transfer of deposit.**—Where a licensed insurer is exempted under this section, the Minister shall transfer its deposit under this Act to the minister responsible for the deposit in the province in which the insurer has its head office or to the insurer, as that minister requests.

97. Agreement to use securities to reinsure.—At any time before the granting of an order for the administration of a reciprocal deposit, the superintendent of insurance of each reciprocating province may enter into an agreement to use all or any part of the securities deposited for the purpose of reinsuring all or any part of the risks of the insurer outstanding in all or any of those provinces.

98. (1) Application of ss. 94-96 to other provinces.—The Lieutenant Governor in Council may, on being satisfied that any other province has enacted provisions identical with or substantially the same as sections 94 to 96, order that those sections apply to that province.

(2) **Copy of order.**—A copy of every order under subsection (1) shall be sent to the superintendent of insurance in each province.

99. (1) Transfer of deposit from discontinuing insurer to continuing insurer.—Where a licensed insurer, hereinafter called the continuing insurer, has, by purchase or otherwise, acquired the assets and assumed the liabilities in Ontario of another licensed insurer, hereinafter called the discontinuing insurer, or reinsured all the contracts of a discontinuing insurer outstanding in Ontario, the Lieutenant Governor in Council may, upon the application of the continuing insurer, and upon the report of the Superintendent, direct the transfer of the deposit held by the Minister under this Act in the name of the discontinuing insurer to the continuing insurer.

(2) **Effect of transfer.**—In any such case, the deposit so transferred shall thereafter be treated and dealt with under this Act in the same manner as though it had been originally deposited by the continuing insurer.

Records and Returns

100. Report on share transfers.—No transfers of shares of an insurer shall be entered in the book or books maintained for that purpose until thirty days after notice thereof has been deposited with the Commissioner if,

- (a) the transfer relates to 10 per cent or more of the issued shares of the insurer for the time being enjoying voting rights; or
- (b) the directors have reason to believe that the transfer would result in a majority of the issued shares of the insurer for the time being enjoying voting rights being beneficially owned by any one person.

101. (1) Returns.—When required by the Commissioner, licensed insurers shall prepare and file with the Commission or with an agency designated by the Commissioner a return respecting the experience of the insurer's business in a form approved by the Commissioner containing such information as the Commissioner may require.

(2) **Compilation of data.**—The Superintendent may require any agency so designated to compile the data so filed in such form as he may approve, and the expense of making the compilation shall be apportioned among the insurers whose data is compiled by such agency by the Superintendent who shall certify in writing the amount due from each insurer and it is payable by the insurer to such agency forthwith.

(3) **Audit and direction.**—If it appears to the Commissioner that the insurer's records of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the return, the Commissioner may nominate an accountant to proceed under his or her direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly after the audit.

(4) **Expenses of audit.**—The insurer shall pay the accountant for an audit under subsection (3) forthwith upon receiving a certificate of the Commission stating the amount payable.

(5) **Debt to the Crown.**—Any amount payable to an accountant under subsection (3) that is not paid within thirty days from the date on which the insurer receives the Commission's certificate becomes a debt owing to the Crown.

101.1 Information on claims.—Every insurer shall provide the Commission or an agency designated by the Commissioner with information prescribed by the regulations about applications for insurance and claims made to the insurer at such times and subject to such conditions as are prescribed by the regulations. S.O. 1996, c. 21, s. 13.

102. (1) Annual and interim statements.—Subject to sections 370 and 374, every licensed insurer shall,

- (a) prepare annually and deliver to the Superintendent, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs

of the insurer for the year that ended, at the election of the company in its by-laws, on the 31st day of October or the 31st day of December next preceding the delivery of the statement; and

- (b) prepare and deliver to the Superintendent when required by the Superintendent, for the prescribed category of insurer, an interim statement for the period specified by the Superintendent containing such information as the Superintendent considers necessary to assess the insurer's condition of affairs.

(2) **Contents of annual statement.**—A statement of the condition of affairs of an insurer under clause (1)(a) shall be in a form approved by the Superintendent, and shall set out,

- (a) the assets, liabilities, revenues and expenses of the insurer for the year;
- (b) particulars of the business done by the insurer in Ontario during the year; and
- (c) such other information as the Superintendent considers necessary to assess an insurer's condition of affairs.

(3) **Auditor's report.**—A statement of the condition of affairs of an insurer under clause (1)(a) shall be accompanied by a report of an auditor prepared in the manner required by the Superintendent.

(4) **Modified statement for Canada licensees.**—In the case of an insurer designated by the Lieutenant Governor in Council, the Superintendent may, in lieu of the annual statement required to be filed by all insurers under clause (1)(a), direct the preparation of a modified statement respecting the business of the insurer in Ontario only.

(5) **Who may verify statement.**—In the case of a corporation, such statement shall be verified by the president, vice-president or managing director, or other director appointed for the purpose by the board of directors, and by the secretary or manager of the corporation.

(6) **Indirect collection of personal information.**—The Superintendent is authorized to obtain from insurers personal information about identifiable individuals where the collection of the information is required to monitor the condition of affairs of the insurer and the information is collected on a statement made under subsection (1). S.O. 1994, c. 11, s. 337.

103. Notice of returns.—Notice of the requirements for returns under section 101 or 102 is sufficient if it is sent by first class ordinary mail addressed to the insurer at the insurer's address for service of notice or process as identified in the records of the Superintendent.

104. Preparation of financial statements.—The financial statements required under this Act shall be prepared in accordance with this Act and the regulations.

105. Published statements.—A statement purporting to show the financial condition of an insurer differing from the financial condition shown by the statement filed with the Superintendent, or a balance sheet or other statement in form differing from the

form prescribed by the regulations, shall not be published or circulated, and every insurer publishing such a statement is guilty of an offence.

106. Statements that financial standing guaranteed by government prohibited.—Every person who represents orally or in writing that the issue of a licence to an insurer or the printing or publication of an annual statement in the report of the Superintendent or in any other publication of the Superintendent or any other circumstance of the supervision or regulation of the business of the insurer by law or the Superintendent is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity is guilty of an offence.

Real Estate

107. (1) Powers of insurer to hold real estate.—A licensed insurer, and, subject to its constitution and rules, a licensed fraternal or mutual benefit society or any branch or lodge thereof, may acquire and hold absolutely for its own use and benefit such real estate or leaseholds,

- (a) as are necessary for the transaction of its business; and
- (b) as are mortgaged to it by way of security or are acquired by it by foreclosure or in satisfaction of a debt,

and may sell, mortgage, lease or otherwise dispose of the same, but real estate or leaseholds acquired by foreclosure or in satisfaction of a debt shall be sold or disposed of within seven years after they have been so acquired.

(2) Additional real estate.—Except in the case of a fraternal or mutual benefit society or any branch or lodge thereof, a licensed insurer may,

- (a) acquire and hold real estate or leaseholds in addition to those provided for by subsections (1) and (6); and
- (b) acquire or construct and hold a building larger than is required for the transaction of its business, and may lease any part of the building not so required.

(3) Powers of societies re office building.—A licensed fraternal or mutual benefit society or any branch or lodge thereof may, subject to its constitution or rules and when so authorized by the Lieutenant Governor in Council, acquire or construct and hold a building larger than is required for the transaction of its business, and may lease any part of the building not so required.

(4) Forfeiture.—Any real estate or leaseholds acquired by foreclosure or in satisfaction of a debt that have been held by the insurer for a longer period than seven years without being disposed of shall, unless held pursuant to any other provision of this section, be forfeited to Her Majesty for the use of Ontario.

(5) Idem.—No forfeiture under subsection (4) shall take effect until the expiration of at least six calendar months after notice in writing to the insurer by the Minister of the intention of Her Majesty to claim the forfeiture, but the insurer may, notwithstanding

such notice, before the forfeiture is effected, sell or dispose of the property free from liability to forfeiture.

(6) **Investments in real estate.**—A licensed insurer that has invested its funds in such real estate or leaseholds as are referred to in subsections 433(1), (2), (4) and (6) may acquire and hold such property absolutely for its own use and benefit.

(7) **Rights under section are additional.**—Except where otherwise provided, every right, power and authority granted by this section is in addition to any right, power and authority granted by a licence issued under any Act.

Life Insurance Reserves

108. (1) Valuation of contracts of insurance.—The valuation of contracts of insurance issued by insurers incorporated and licensed under the law of Ontario to transact life insurance, except contracts of fraternal societies licensed under this Act, shall include a reserve for all unmatured obligations guaranteed under the terms of its policies dependent on life, disability, sickness, accident or any other contingency or on a term certain, and shall also include a reserve for profits ascertained and apportioned for future distribution.

(2) **Methods of computation for life policies.**—In computing the reserve for all unmatured obligations guaranteed under the terms of the policies dependent on life contingencies only, the valuation shall be made in accordance with the following prescriptions:

1. The rate of interest assumed shall not exceed the rate prescribed in Schedule B, except that where, upon the application of a company and upon the recommendation of the Superintendent, the Lieutenant Governor in Council is satisfied that a higher rate is appropriate for a particular class of policy issued by the company, the Lieutenant Governor in Council may by order authorize the assumption of such higher rate of interest as the Lieutenant Governor in Council specifies in the order, and the Lieutenant Governor in Council may by order withdraw the authorization at any time and an order of the Lieutenant Governor in Council under this paragraph shall be deemed to be a regulation within the meaning of the *Regulations Act*.
2. The tables of mortality used shall be the tables prescribed in Schedule B, subject to any modification in the age that the company considers appropriate and necessary to secure the proper valuation of a particular class of policies and that has the effect of increasing the reserves, but, if it appears to a company that the reserves for a particular class of policies cannot be appropriately computed by any table of mortality prescribed by Schedule B or by any such table modified as aforesaid, the company shall apply to the Superintendent for approval of the table the company considers most appropriate for the computation, and the Superintendent may grant such approval and revoke it at any time.
3. The method of valuation shall be that specified in Schedule B or any adaptation

thereof approved by the Superintendent, or any other method the company considers appropriate, but the method used shall be such that the reserve calculated in accordance therewith will not be less at any duration than the reserve computed in accordance with the valuation provisions of Schedule B, and the method used shall make adequate provision for the guaranteed values at the subsequent durations of the policy according to the rate of interest and the table of mortality used in the valuation.

4. The reserve in the first policy year need not in any event exceed the reserve computed in accordance with the rate of interest and table of mortality used in the valuation and the method of valuation as specified in Schedule B.

(3) Computation for other than life policies.—In computing the reserve for all unmatured obligations that are guaranteed under the terms of, or that arise out of policies dependent on, contingencies other than life contingencies, the bases and methods of valuation employed by the company shall be such as to place an adequate value on the liabilities thereunder and shall be such that the value of the benefits under every policy shall in no case be less than the value placed upon the future premiums.

(4) Certificate of actuary.—There shall be included in the annual statement a certificate by the actuary of the company, or by the actuary responsible for the valuation if the company has no actuary, to the effect that the reserves shown in the valuation summary are not less than the reserves required by this section and, in addition, that in his opinion the reserves make a good and sufficient provision for all unmatured obligations of the company guaranteed under the terms of its policies.

(5) Report on approved mortality tables.—Where the Superintendent approves of a table of mortality under subsection (2), the Superintendent shall include in his or her annual report to the Minister information concerning the origin, characteristics of the table and the circumstances in which it may be used, and, when the Superintendent revokes any such approval, he or she shall include a statement as to the circumstances of the revocation.

(6) Contracts must be self-supporting.—No insurer shall issue any policy that does not appear to be self-supporting upon reasonable assumptions as to interest, mortality and expenses.

(7) Valuation of fraternal society contracts.—Where the contracts of a fraternal society are reinsured by a licensed insurer other than a fraternal society, the reinsurer may, with approval of the Superintendent, value such contracts on any appropriate table of mortality specified in Schedule B with interest at 4 per cent per annum.

109. (1) Authorization for variable contracts based on segregated funds.—Any insurer incorporated and licensed under the laws of Ontario to transact the business of life insurance may,

- (a) issue policies for which the reserves vary in amount with the market value of a specified group of assets; and
- (b) retain for investment,

- (i) policy dividends,
 - (ii) policy proceeds that become payable on surrender or maturity of the policy not less than five years from the date of its issue if the policyholder so directs, and
 - (iii) policy proceeds that become payable on the death of the policyholder if the policyholder or beneficiary so directs,
- on the basis that the liability of the insurer in respect thereof varies in amount with the market value of a specified group of assets,

and the insurer shall maintain in respect of such policies, dividends and proceeds, as the case may be, one or more separate and distinct funds with separate assets for each such fund.

(2) **How fund created.**—For the purpose of creating a separate and distinct fund under subsection (1), an insurer may, if duly authorized by by-law,

- (a) make a transfer from the shareholders' fund but the amounts so transferred shall not exceed the surplus in the shareholders' fund; and
- (b) make a transfer of assets from one or more life insurance funds, but,
 - (i) the maximum amount that may be transferred from any life insurance fund is the amount by which 25 per cent of the surplus in that fund exceeds the aggregate of all prior transfers from that fund to all such separate and distinct funds under this subsection and clause (3)(b) less the aggregate of all prior transfers to that fund pursuant to clause (5)(a), and
 - (ii) the maximum amount that may be transferred from all life insurance funds is the amount by which 10 per cent of the surplus in those funds or \$2,000,000, whichever is the lesser, exceeds the aggregate of all prior transfers from those funds to all such separate and distinct funds pursuant to this subsection and clause (3)(b) less the aggregate of all prior transfers to all life insurance funds pursuant to clause (5)(a).

(3) **Transfers to fund.**—For the purpose of maintaining a separate and distinct fund under subsection (1), an insurer may from time to time make transfers from a life insurance fund,

- (a) to the extent that the assets of the separate and distinct fund are not sufficient to provide for any benefits guaranteed under the terms of the policies for which the separate fund is held; or
- (b) in any case other than that mentioned in clause(a), if the insurer provides evidence satisfactory to the Superintendent that such transfers are necessary for the proper administration of the policies or deposits for which the separate fund is held.

(4) **Surplus.**—Where for the purposes of subsection (2) the surplus in any fund is required to be determined, the surplus shall be taken as shown in the most recent annual statement filed with the Superintendent.

(5) **Segregation of assets for policies.**—Where a separate and distinct fund is maintained under subsection (1), the assets of such fund shall, subject to subsection (3), be available only to meet the liabilities arising under the policies or deposits in respect of which such fund is maintained, except that,

- (a) any amount representing the value of a transfer, or any part thereof, to such separate and distinct fund under subsection (2) or clause (3)(b), may, with the approval of the Superintendent, be transferred back to the fund or funds from which such transfer was made, and, where there is more than one such fund, the amount transferred back to each shall be that proportion of the whole amount that the amount transferred from that fund to the separate and distinct fund was to the total amount so transferred from all the funds; and
- (b) any assets, other than assets in respect of a transfer to the separate and distinct fund under subsection (2) or clause (3)(b), remaining in the separate and distinct fund after the discharge of all the insurer's liabilities in respect of the policies or deposits for which the fund is maintained, may be transferred to such other fund as the directors may determine.

(6) **Value of transfers.**—For the purposes of clause (2)(b), the value of any assets transferred to or from a separate and distinct fund shall be taken as the value thereof at the time of transfer to that fund and, for all other purposes, the value from time to time of any assets that have been transferred to a separate and distinct fund maintained under subsection (1) shall be the market value of such assets.

(7) **Exception from investment limitations.**—Where a separate and distinct fund is maintained under subsection (1), the percentage limits specified in clauses 435(1)(e) and (f) do not apply to the investments and loans constituting the assets of the fund and in the application of those limits to the insurer as a whole the assets of any such separate fund shall not be taken into account, but clause 435(1)(c) applies to each separate and distinct fund as if the total assets of each such fund were the total assets of the insurer.

110. (1) Definition of variable insurance contracts.—In this section, “variable insurance contract” means an annuity or life insurance contract for which the reserves or a part thereof vary in amount with the market value of a specified group of assets held in a separate and distinct fund and includes a provision in a life insurance contract under which policy dividends or policy proceeds may be retained for investment in such a fund.

(2) **Prohibition.**—No insurer shall issue a variable insurance contract or offer to enter into a variable insurance contract that under this Act would be deemed to be made in Ontario until there has been filed with the Superintendent a specimen form of such variable insurance contract, an information folder pertaining thereto and such other material as may be required under the regulations and a receipt therefor has been obtained from the Superintendent.

(3) **Form of contract.**—The forms of variable insurance contracts and information folders with respect thereto shall comply with the requirements of Part V of this Act and the regulations.

(4) **Form of information folder.**—The information folder shall provide brief and plain disclosure of all material facts relating to the variable insurance contract and shall contain a certificate to that effect signed by the chief executive officer and the chief financial officer of the insurer or such other persons as the regulations may prescribe.

(5) **Delivery of information folder.**—No application for a variable insurance contract shall be accepted by an insurer until the insurer has delivered to the applicant therefor a copy of the latest information folder relating thereto that is on file with the Superintendent.

(6) **New information folders.**—So long as an insurer continues to issue a variable insurance contract in respect of which it has filed an information folder, it shall,

- (a) forthwith after the occurrence of any material change in the contract or in any other facts set out in the latest information folder so filed; and
- (b) within thirteen months after the date of filing of the latest information folder so filed, or such other period of time as may be provided by the regulations,

file with the Superintendent a new information folder in respect thereof.

(7) **Prohibition order.**—Where it appears to the Superintendent that,

- (a) an information folder or any other document filed with the Superintendent by an insurer with respect to a variable insurance contract,
 - (i) fails to comply in any substantial respect with the requirements of this Act or the regulations,
 - (ii) contains any promise, estimate, illustration or forecast that is misleading, false or deceptive, or
 - (iii) conceals or omits to state any material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made; or
- (b) the financial condition of the insurer or its method of operation in connection with the issuance of its variable insurance contracts will not afford sufficient protection to prospective purchasers of such variable insurance contracts in Ontario,

the Superintendent shall report the same to the Commissioner and the Commissioner, if he or she concurs in the report and after affording the insurer an opportunity to be heard, may order the Superintendent to prohibit the insurer from continuing to issue such variable insurance contracts in Ontario.

(8) **Regulations.**—The Lieutenant Governor in Council may make regulations,

- (a) prescribing the form and content of variable insurance contracts;
- (b) prescribing the form, content, time of filing and delivery of information folders and the persons to whom information folders shall be delivered;

- (c) for the furnishing of information by an insurer or an agent thereof to prospective purchasers of variable insurance contracts;
- (d) prescribing the documents, reports, statements, agreements and other information required to be filed, furnished or delivered under this section, and the form and content thereof.

111. Separate accounts.—Every insurer licensed to transact life insurance shall keep separate and distinct accounts of participating and non-participating business.

112. (1) Distribution of part of profits to participating policyholders.—The directors of an insurer incorporated and licensed under the laws of Ontario to transact the business of life insurance as a joint stock insurance company may from time to time set apart such portion of the net profits as they consider safe and proper for distribution as dividends or bonuses to shareholders and holders of participating policies ascertaining the part thereof that has been derived from participating policies and distinguishing that part from the profits derived from other sources.

(2) Idem.—Notwithstanding anything to the contrary in any letters patent of incorporation or contract, the holders of participating policies are entitled to share in that portion of the profits that has been distinguished as having been derived from participating policies (including a share of the profits arising from the sale of securities in the proportion of the mean participating fund to the mean total funds) to the extent of at least 90 per cent thereof in any year.

(3) Interest on unimpaired paid up capital stock.—In fixing or arriving at the amount of divisible profits, there may be included interest on the amount of the unimpaired paid up capital stock and on any other sum or sums from time to time standing to the credit of the shareholders after deducting any amounts expended in the establishment, prosecution or extension of the company's business or applied to making good any impairment of capital, and such interest may be allowed or credited to the shareholders at the average net rate of interest earned in the preceding year or other period under consideration upon the mean total funds of the company, but the shareholders are to be charged with a fair proportion of all losses incurred upon investments or other losses of a similar character in the proportion of the mean shareholders' funds to the mean total funds.

(4) Rights of participating policyholders.—This section does not interfere with the rights of the participating policyholders of an insurer referred to in subsection (1) to share in the profits realized from the non-participating branch of its business in any case to which the policyholders are so entitled.

Insurance with Unlicensed Insurers

113. Insurance with unlicensed insurers.—Notwithstanding anything in this Act, any person may insure property situated in Ontario against fire with an unlicensed insurer, and any property insured or to be insured under this section may be inspected and any

loss incurred in respect thereof adjusted, if such insurance is effected outside Ontario and without any solicitation whatsoever directly or indirectly on the part of the insurer.

Underwriters Agencies

114. (1) Licence.—A policy of insurance shall not be issued through any underwriters agency under its own name for an insurer, unless the insurer is licensed to carry on business in Ontario and has obtained from the Superintendent a licence to issue contracts of insurance through such underwriters agency.

(2) Form of policy.—Every policy of insurance issued through any such underwriters agency shall be in a form approved by the Superintendent and shall bear upon its face the name and address of the insurer in a prominent and conspicuous manner, and the name of the underwriters agency shall not appear on the face of the policy except as a countersignature thereto.

(3) Name on filing back.—On no other part of the policy shall the name of the underwriters agency appear except that for the identification purposes the words “issued through the . . . Underwriters Agency” or the French equivalent may be printed on the filing back of the policy following the name of the insurer and in type not larger than half the depth of that used in printing such name.

(4) Evidence of adoption of form of policy by insurer.—Upon an application for a licence under this section, the insurer shall furnish to the Superintendent evidence of its approval and adoption of the form of policy to be issued through the underwriters agency and of the authority of the underwriters agency or its agents to bind the insurer.

(5) Annual return.—Every insurer licensed under this Act carrying on business or issuing any policy of insurance through any such underwriters agency shall file an annual return of the business transacted through the same underwriters agency in a form prescribed by the Superintendent.

General

115. Trafficking in life insurance policies prohibited.—Any person, other than an insurer or its duly authorized agent, who advertises or holds himself, herself or itself out as a purchaser of life insurance policies or of benefits thereunder, or who trafficks or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to himself or any other person, is guilty of an offence.

116. Privileged information.—Any information, document, record, statement or thing made or disclosed to the Commission concerning a person licensed or applying for licence under this Act is absolutely privileged and shall not be used as evidence in any action or proceeding in any court brought by or on behalf of such person.

117. (1) Insurer to file form of policy.—The Superintendent may require an insurer to file with him a copy of any form of policy or of the form of application for any policy issued or used by the insurer.

(2) Prohibition of certain policies.—The Superintendent shall report to the Commissioner any case where an insurer issues a policy or uses an application that, in the opinion of the Superintendent, is unfair, fraudulent or not in the public interest, and after hearing the insurer the Commissioner may, if he or she concurs in the report, order the Superintendent to prohibit the insurer from issuing or using such form of policy or application.

(3) Offence.—An insurer that, after being so prohibited, issues any such policy or uses any such application is guilty of an offence.

118. Violation of law, effect of, on claim for indemnity.—Unless the contract otherwise provides, a contravention of any criminal or other law in force in Ontario or elsewhere does not, by that fact alone, render unenforceable a claim for indemnity under a contract of insurance except where the contravention is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage but in the case of a contract of life insurance this section applies only to disability insurance undertaken as part of the contract.

119. Reporting on applications to register.—An insurer incorporated under the laws of Ontario shall notify the Superintendent fourteen days in advance of making application for registration under Part IX of the *Canadian and British Insurance Companies Act* (Canada) or any similar enactment or regulation of the Government of Canada.

Agreements with Compensation Association

120. Authority of Minister.—The Minister, with the approval of the Lieutenant Governor in Council, may enter into agreements with a compensation association related to the conduct of a plan to compensate policyholders and eligible claimants of insolvent insurers.

Fees and Regulations

121. (1) Regulations.—The Lieutenant Governor in Council may make regulations,

- (1.) prescribing fees in relation to matters under this Act, including fees for licences and their renewal, for the filing of documents and, for any services provided by or through the Ministry of Financial Institutions or the Commission;
- (2.) prescribing forms and providing for their use;
- (2.1) prescribing Acts for the purpose of subsections 12.1(1), 12.2(1) and 14(1).

- (3.) designating one or more bodies corporate or associations as compensation associations and designating any such body corporate or association as a compensation association for one or more classes of insurance;
- (4.) designating classes of insurance for the purposes of clause 44(1)(1);
- (5.) designating insurers for the purposes of subsection 44(3);
- (6.) prescribing ratios, percentages, amounts and calculations for the purposes of subsection 60(1) and any such regulation may prescribe different ratios, percentages, amounts and calculations for one or more classes of insurance and for insurers whose business is limited to that of reinsurance;
- (7.) exempting any insurer or class of insurers from any regulation made under clause (ae) subject to such terms and conditions as may be set out in the regulations;
- (7.1) prescribing an activity or failure to act for the purpose of paragraph 8 of subsection 65.1(1).
- (8.) prescribing a maximum proportion of risks that may be reinsured with insurers that are not licensed under this Act and such proportion may vary for different classes of insurance;
- (9.) establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (10.) requiring insurers to offer optional benefits in excess of the benefits that must be provided under clause (b) and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (10.1) prescribing coverages and endorsements in respect of contracts of automobile insurance that insurers or a class of insurers are required to offer, deeming the benefits provided by the coverages and endorsements not to be statutory accident benefits for the purpose of Part VI, and prescribing the circumstances in which the coverages and endorsements shall be offered.
- (10.2) prescribing rules for interpreting the regulations made under paragraphs 9 and 10 or any provision of those regulations;
- (10.3) prescribing functions to be performed by a committee appointed under section 7.
- (10.4) governing the procedure for determining who is liable to pay statutory accident benefits under section 268, including requiring insurers to resolve disputes about liability through an arbitration process established by the regulations and requiring the interim payment of benefits pending the determination of liability.

- (11.) prescribing categories of insurers for the purpose of subsection 101(1), requiring insurers to file a return under that subsection by category and prescribing the information that insurers may solicit from insured persons for purposes of such returns;
- (11.1) prescribing the information to be provided under section 101.1 and any conditions that apply to the provision of the information;
- (12.) prescribing categories of insurers for the purpose of subsection 102(1);
- (13.) prescribing dates for the purpose of clause 102(1)(a);
- (14.) governing the preparation of financial statements required under this Act or the regulations;
- (15.) prescribing the information to be given to applicants or to insured persons under subsection 229(1) and the circumstances in which it is to be given;
- (15.0.1) governing the inspection of automobiles for the purpose of section 232.1;
- (15.1) for the purpose of section 234, prescribing statutory conditions and the types of contracts of automobile insurance to which the statutory conditions apply.
- (16.) establishing requirements that must be met, in circumstances specified by the regulations, before an insurer declines to issue, terminates or refuses to renew a contract of automobile insurance or refuses to provide or continue any coverage or endorsement in respect of a contract of automobile insurance;
- (17.) prescribing grounds for which an insurer cannot, in circumstance specified by the regulations, decline to issue, terminate or refuse to renew a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect of a contract of automobile insurance.
- (18.) prescribing coverages and endorsements for the purposes of section 237;
- (19.) governing the payment of premiums for automobile insurance in instalments and setting maximum rates of interest in relation to instalment payments;
- (20.) exempting any insurer, and exempting any insurer in respect of certain types of contracts of automobile insurance, from section 236;
- (20.1) prescribing information to be provided under clause 258.3(1)(c) and the time period within which the information must be provided for the purpose of that clause;
- (20.2) prescribing procedures and time limits applicable to mediations required by section 258.6;
- (20.3) prescribing circumstances in which a contract or part of a contract provid-

- ing insurance against loss of or damage to an automobile and the loss of use thereof must contain a clause described in subsection 261(1.1);
- (20.4) prescribing a minimum or maximum sum to be deducted under a clause described in clause 261(1)(b) or subsection 261(1.1);
 - (21.) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;
 - (22.) providing for and governing indemnification and subrogation where section 263 applies;
 - (22.1) prescribing classes of contracts for the purpose of subsection 263(5.1);
 - (22.2) prescribing circumstances in which a contract belonging to a class prescribed under paragraph 22.1 must contain a provision described in subsection 263(5.2.1);
 - (22.3) prescribing the minimum or maximum amount of a reduction required by a provision described in clause 263(5.1)(b) or subsection 263(5.2.1);
 - (23.) prescribing any activity or failure to act that constitutes an unfair or deceptive act or practice under clause 1 of the definition of “unfair or deceptive acts or practices” in section 438, and prescribing requirements that, if not complied with, constitute an unfair or deceptive act or practice;
 - (23.1) defining serious impairment of an important physical, mental or psychological function for the purpose of section 267.1 and defining permanent serious impairment of an important physical, mental or psychological function for the purpose of section 267.5;
 - (23.2) respecting the evidence that must be adduced to prove that a person has sustained serious impairment of an important physical, mental or psychological function for the purposes of section 267.1 or permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5;
 - (23.3) prescribing the method for determining net income loss and net loss of earning capacity for the purpose of paragraphs 2 and 3 of subsection 267.5(1).
 - (23.4) defining catastrophic impairment for the purpose of subsection 267.5(4).
 - (23.5) prescribing amounts for the purpose of sub-subparagraph B of subparagraph i of paragraph 3 of subsection 267.5(7) and sub-subparagraph B of subparagraph ii of paragraph 3 of subsection 267.5(7);
 - (23.6) prescribing circumstances in which the court shall order that an award for damages be paid periodically under section 267.10;
 - (23.7) prescribing the information to be provided under section 273.1 and the conditions governing the provision of the information.

- (24.) prescribing classes of persons, classes of automobiles and terms, conditions, provisions, exclusions and limits for the purposes of subsection 275(1);
- (25.) prescribing rules of procedure and setting time limits in respect of mediation, arbitration, appeal and variation proceedings under sections 280 to 284 and in respect of evaluations under section 280.1.
- (25.1) governing agreements to settle claims and disputes in respect of statutory accident benefits under Part VI;
- (25.2) governing the assignment of statutory accident benefits under Part VI, including the application of sections 279 to 287 to persons to whom the benefits are assigned;
- (26.) prescribing expenses that may be awarded to insured persons and insurers under subsections 282(11) and (11.1), prescribing criteria governing the awarding of the expenses, and setting maximum amounts that may be awarded for the expenses.
- (27.) permitting the Director to vary or revoke orders and prescribing rules of procedure and setting conditions and setting time-limits in respect thereof and permitting the Director to proceed by way of a hearing or by way of written submissions;
- (28.) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned in this Act;
- (28.1) exempting a person or class of persons from section 393 and sections 397 to 401, or from any provision of those sections, subject to such terms and conditions as may be specified in the regulations;
- (28.2) governing the sale and marketing of prescribed classes of insurance to members of a group, including prescribing and regulating qualifications for membership in groups;
- (29.) governing group insurance contracts or schemes, or any class thereof including prescribing and regulating their terms and conditions, qualifications for membership in groups and regulating the marketing of group insurance contracts or schemes;
- (30.) prescribing and defining the terms and conditions upon which an insurer licensed to transact the business of life insurance may invest its funds in fully paid shares of other corporations under the provisions of this Act;
- (31.) prescribing classes of bodies corporate in whose fully paid shares a mutual insurance corporation that is a participant in the Fire Mutuals Guarantee Fund may invest its funds under subsection 433(9) and setting out what constitutes control for the purpose of subsection 433(9).
- (32.) prescribing and defining the terms and conditions upon which an insurer

may invest its funds in the fully paid voting shares of a dealer within the meaning of the *Securities Act*;

- (33.) governing the advertising of insurance contracts or any class thereof including prescribing and regulating the form and content of advertisements and requiring their filing;
- (33.1) governing the collection, use and disclosure of personal information by insurers or a class of insurers and, for that purpose, defining personal information;
- (34.) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance in respect of which sections 410 to 417 apply;
- (34.1) prescribing percentages, criteria and elements of risk classification systems for the purposes of subsection 411(1);
- (34.2) prescribing circumstances in which the Commissioner is required to hold a hearing on an application under section 410 to which section 411 does not apply;
- (35.) prescribing coverages and categories of automobile insurance that may be provided by insurers and prescribing coverages and categories of automobile insurance that insurers are prohibited from providing;
- (36.) prescribing a risk classification system or elements of a risk classification system that must be used by insurers or a class of insurers in classifying risks for a coverage or category of automobile insurance;
- (36.1) prescribing elements or a risk classification system that insurers or a class of insurers are prohibited from using in classifying risks for a coverage or category of automobile insurance;
- (36.2) prescribing, for the purpose of section 413.1, maximum monetary amounts and percentages by which the rate for a class of risks in respect of a coverage or category of automobile insurance may increase or decrease as a result of the application of a regulation made under paragraph 36 or 36.1;
- (37.) prescribing, for the purpose of section 14, the method of determining the share of an assessment that is payable by an insurer;
- (37.0.1) prescribing amounts incurred by the Ministry of Health that may be subject to an assessment under section 14.1 and governing assessments under that section.
- (37.1) respecting the relations between insurers, agents or brokers and,
 - i. identities that undertake the business of financial services,
 - ii. financial services intermediaries, and

- iii. customers of persons and entities referred to in subparagraphs i and ii;

(37.2) respecting networking arrangements between insurers and other persons providing products or services to the insurer or its customers;

(37.3) prohibiting or restricting networking arrangements;

(37.4) governing the conduct of insurers, agents and brokers in networking arrangements.

(38.) generally for the better administration of this Act.

(2) **Effective date of regulations.**—A regulation made under paragraph 6 does not come into force until the day thirty days after it is filed with the Registrar of Regulations or such later day as may be set out in the regulation.

(2.1) **General or particular.**—A regulation made under subsection (1) may be general or particular.

(2.2) **Adoption by reference.**—A regulation made under subsection (1) may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, standard or guideline, as it reads at the time the regulation is made or as amended from time to time, whether before or after the regulation is made.

(3) Repealed. S.O. 1996, c. 21, s. 14(10).

(4) **Same.**—The regulations made under paragraphs 9 and 10 of subsection (1),

(a) may establish procedures applicable to benefits;

(b) may prescribe the burden of proof and standard of proof applicable in court proceedings related to benefits and in arbitrations under section 282.

(c) may require that a person be examined or assessed,

(i) by an assessment centre designated by a committee appointed under section 7, in accordance with procedures, standards and guidelines established by that committee or by the Minister, or

(ii) by any other person specified by the regulations.

(f) may authorize the payment of a benefit directly to a minor for the purpose of subsection 271(1.4),

(g) may provide for the use of forms prescribed by the regulations or approved by the Commissioner; and

(h) may designate jurisdictions for the purpose of any provision of this or any other Act that refers to jurisdictions designated in the *Statutory Accident Benefits Schedule*. S.O. 1993, c. 10, s. 12(1)-(14); S.O. 1994, c. 11, s. 338(1), (2); S.O. 1996, c. 21, s. 14.

PART III

INSURANCE CONTRACTS IN ONTARIO

122. Application of Part.—Except where otherwise provided and where not inconsistent with other provisions of this Act, this Part applies to every contract of insurance made in Ontario, other than contracts of,

- (a) accident and sickness insurance;
- (b) life insurance; and
- (c) marine insurance.

123. Contracts deemed made in Ontario.—Where the subject-matter of a contract of insurance is property in Ontario or an insurable interest of a person resident in Ontario, the contract of insurance, if signed, countersigned, issued or delivered in Ontario or committed to the post office or to any carrier, messenger or agent to be delivered or handed over to the insured, or the insured's assign or agent in Ontario shall be deemed to evidence a contract made therein, and the contract shall be construed according to the law thereof, and all moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the insurer in lawful money of Canada.

124. (1) Terms, etc., of contracts invalid unless set out in full.—All the terms and conditions of the contract of insurance shall be set out in full in the policy or by writing securely attached to it when issued, and, unless so set out, no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect is valid or admissible in evidence to the prejudice of the insured or beneficiary.

(2) Exception.—Subsection (1) does not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy.

(3) Contents of renewal receipt.—Whether the contract does or does not provide for its renewal, but it is renewed by a renewal receipt, it is a sufficient compliance with subsection (1) if the terms and conditions of the contract are set out as provided by that subsection and the renewal receipt refers to the contract by its number or date.

(4) What regard to be given to proposal.—The proposal or application of the insured shall not as against the insured be deemed a part of or be considered with the contract of insurance except in so far as the court determines that it contains a material misrepresentation by which the insurer was induced to enter into the contract.

(5) Contract not to be invalidated by erroneous statement in application unless material.—No contract of insurance shall contain or have endorsed upon it, or be made subject to, any term, condition, stipulation, warranty or proviso providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the insurer, unless such term, condition, stipulation, warranty or proviso is and is expressed to be limited to cases in which such

statement is material to the contract, and no contract shall be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.

(6) **Materiality, how decided.**—The question of materiality in a contract of insurance is a question of fact for the jury, or for the court if there is no jury, and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance, or in the instrument of contract, or in any agreement or document relating thereto, has any force or validity.

(7) **Application.**—This section does not apply to contracts of fire or automobile insurance.

125. Copy of proposal to be furnished to insured.—An insurer shall upon request furnish to the insured a true copy of the insured's application or proposal for insurance.

126. (1) No contract shall be inconsistent with Act.—No insurer shall make a contract of insurance inconsistent with this Act.

(2) **Rights of insured.**—An act or omission of the insurer resulting in imperfect compliance with any of the provisions of this Act does not render a contract invalid as against the insured.

127. (1) Contents of policy.—Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the amount, or the method of determining the amount, of the premium for the insurance, the subject-matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which the liability is to accrue, the date upon which the insurance takes effect and the date it terminates or the method by which the latter is fixed or to be fixed.

(2) **Application of section.**—This section does not apply to contracts of guarantee insurance.

128. (1) Application.—This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

(2) **Appraisals.**—The insured and the insurer shall each appoint an appraiser, and the two appraisers so appointed shall appoint an umpire.

(3) **Appraisers.**—The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

(4) **Costs.**—Each party to the appraisal shall pay the appraiser appointed by the party and shall bear equally the expense of the appraisal and the umpire.

(5) **Appointment by judge.**—Where,

- (a) a party fails to appoint an appraiser within seven clear days after being served with written notice to do so;

(b) the appraisers fail to agree upon an umpire within fifteen days after their appointment; or

(c) an appraiser or umpire refuses to act or is incapable of acting or dies,

a judge of the Ontario Court (General Division) may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer.

129. Relief from forfeiture.—Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just.

130. How policy payable.—Insurance money is payable in Ontario in lawful money of Canada.

131. (1) Waiver of term or condition.—No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.

(2) **Idem.**—Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs or to the investigation or adjustment of any claim under the contract.

132. (1) Right of claimant against insurer where execution against insured returned unsatisfied.—Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against the person in respect of his liability, and an execution against the person in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

133. (1) Consolidation of actions.—Where several actions are brought for the recovery of money payable under a contract or contracts of insurance, the court may consolidate or otherwise deal therewith so that there is but one action for and in respect of all the claims made in such actions.

(2) **Where minors are entitled to insurance money.**—Where an action is brought to recover the share of one or more minors, all the other minors entitled, or the trustees, executors or guardians entitled to receive payment of the shares of such other minors, shall be made parties to the action, and the rights of all the minors shall be determined in one action.

(3) **Apportionment of sums directed to be paid.**—In all actions where several persons are interested in the insurance money, the court or judge may apportion among the persons entitled any sum directed to be paid, and may give all necessary directions and relief.

(4) **When payee is domiciled or resident abroad.**—Where the person entitled to receive money due and payable under a contract of insurance, except insurance of the person, is domiciled or resides in a foreign jurisdiction and payment, valid according to the law of such jurisdiction, is made to such person, such payment is valid and effectual for all purposes.

134. (1) Effect of delivery of policy.—Where the policy has been delivered, the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

(2) **Right of insurer in respect of unpaid premium.**—The insurer may sue for the unpaid premium and may deduct the amount thereof from the amount for which the insurer is liable under the contract of insurance.

(3) **Where note or cheque for premium not honoured.**—Where a cheque, bill of exchange or promissory note is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the insurer may terminate the contract forthwith by giving written notice by registered mail.

135. (1) Insurer to furnish forms.—An insurer, immediately upon receipt of a request, and in any event not later than sixty days after receipt of notice of loss, shall furnish to the insured or person to whom the insurance money is payable forms upon which to make the proof of loss required under the contract.

(2) **Offence.**—An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and in addition section 136 is not available to the insurer as a defence to an action brought, after such neglect or refusal, for the recovery of moneys alleged to be payable under the contract of insurance.

(3) **Furnishing of forms not an admission.**—The furnishing by an insurer of forms to make proof of loss shall not be taken to constitute an admission by the insurer that a valid contract is in force or that the loss in question falls within the insurance provided by the contract.

136. When action may be brought under contract.—No action shall be brought for the recovery of money payable under a contract of insurance until the expiration of sixty days after proof, in accordance with the provisions of the contract,

(a) of the loss; or

(b) of the happening of the event upon which the insurance moneys is to become payable,

or of such shorter period as is fixed by the contract of insurance.

Insurance as Collateral Security

137. (1) Mortgagee not to receive commission from insurer.—A mortgagee shall not accept or be entitled to receive either directly or through an agent or employee,

and no officer or employee of such mortgagee shall accept or receive, any commission or other remuneration or benefit in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to the mortgagee as mortgagee.

(2) **Payment of commission prohibited.**—No insurer or agent or broker shall pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in the mortgagee's employ or on the mortgagee's behalf in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to the mortgagee as mortgagee.

(3) **Offence.**—Any insurer or other person who contravenes this section is guilty of an offence.

138. (1) Right to refund of premium on termination of contract.—Where an insured assigns the right to refund of premium that may accrue by reason of the cancellation or termination of a contract of insurance under the terms thereof and notice of the assignment is given by the assignee to the insurer, the insurer shall pay any such refund to the assignee notwithstanding any condition in the contract, whether prescribed under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

(2) **Idem.**—Where the condition in the contract dealing with cancellation or termination by the insurer provides that the refund shall accompany the notice of cancellation or termination, the insurer shall include in the notice a statement that in lieu of payment of the refund in accordance with the condition the refund is being paid to the assignee under this section.

Contracts of Guarantee Insurance

139. (1) Contracts of title insurance.—Every contract of title insurance shall be in writing, and, in addition to the other requirements prescribed by this Act, shall expressly limit the liability of the insurer to a sum stated in the contract.

(2) **Questions as to validity of title.**—If a question arises as to the validity of the title insured, or as to the liability of the insurer, the insurer or the insured or any person entitled to proceed in right of either may by application have such question determined as provided in the *Vendors and Purchasers Act* in the case of vendors and purchasers.

General

140. No racial or religious discrimination permissible.—Any licensed insurer that discriminates unfairly between risks in Ontario because of the race or religion of the insured is guilty of an offence.

141. (1) Payment into court.—Where an insurer cannot obtain a sufficient discharge for insurance money for which it admits liability, the insurer may apply to the

court *ex parte* for an order for the payment thereof into court, and the court may order the payment into court to be made upon such terms as to costs and otherwise as the court may direct, and may provide to what fund or name the amount shall be credited.

(2) **Discharge to insurer.**—The receipt of the registrar or other proper officer of the court is sufficient discharge to the insurer for the insurance money so paid into court, and the insurance money shall be dealt with according to the orders of the court.

PART IV

FIRE INSURANCE

142. Definition.—In this Part, unless the context otherwise requires, “agricultural property” includes dwelling-houses, stables, barns, sheds and outbuildings and their contents, wagons, carriages, and other vehicles, saddles and harness, agricultural engines, implements, tools, instruments, appliances and machinery, household goods, wearing apparel, provisions, musical instruments, libraries, live stock, growing crops, and crops severed from the land, fruit and ornamental trees, shrubs and plants, and live or standing timber, being upon farms as farm property, and owned by members of the insurer in which the property is insured.

143. (1) Application of Part.—This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in Ontario except,

- (a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;
- (b) where the subject-matter of the insurance is rents, charges or loss of profits;
- (c) where the peril of fire is an incidental peril to the coverage provided; or
- (d) where the subject-matter of the insurance is property that is insured by an insurer or group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

(2) **Automobiles.**—Notwithstanding subsection (1), this Part applies to insurance of an automobile as provided in subsection 47(2).

144. (1) Extent of coverage by contract.—Subject to subsection (4) of this section and to clause 151(a), in any contract to which this Part applies the contract shall be deemed to cover the insured property,

- (a) against fire (whether resulting from explosion or otherwise) not occasioned by or happening through,
 - (i) in the case of goods, their undergoing any process involving the application of heat,

(ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;

(b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents unless fire originates outside the article itself and only for such destruction or damage as occurs from such fire;

(c) against explosion (not occasioned by or happening through any of the perils specified in subclause (a)(ii)) of natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues therefrom or not.

(2) **Radio-active contamination.**—Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radio-active material directly or indirectly resulting from fire, lightning or explosion within the meaning of subsection (1).

(3) **Coverage where property removed.**—Where property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage thereto, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred covers, for seven days only or for the unexpired term of the contract if less than seven days, the property removed and any property remaining in the original location in the proportions that the value of the property in each of the respective locations bears to the value of the property in them all.

(4) **Extended insurance.**—Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned therein, but in that case this Part does not apply to the extended insurance.

(5) **Power to extend meaning of “lightning” in livestock contracts.**—An insurer licensed to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of live stock insured against death or injury caused by fire or lightning, the word “lightning” is deemed to include other electrical currents.

145. Renewal of contract.—A contract may be renewed by the delivery of a renewal receipt identifying the policy by number, date or otherwise, or a new premium note.

146. Form of contract.—After an application for insurance is made, if it is in writing, any policy sent to the insured shall be deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy.

147. (1) Mortgagees and other payees.—Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to that person.

(2) **Form of notice.**—The length of and manner of giving the notice under subsection (1) is the same as notice of cancellation to the insured under the statutory conditions in the contract.

Statutory Conditions

148. (1) Statutory conditions.—The conditions set forth in this section shall be deemed to be part of every contract in force in Ontario and shall be printed on every policy with the heading “Statutory Conditions” and no variation or omission of or addition to any statutory condition is binding on the insured.

(2) **Definition.**—In this section, “policy” does not include interim receipts or binders.

1. Misrepresentation.—If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

2. Property of Others—Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

3. Change of Interest.—The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy Act* (Canada) or change of title by succession, by operation of law, or by death.

4. Material Change.—Any change material to the risk and within the control and knowledge of the insured avoids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the contract is no longer in force and the insurer shall return the unearned portion, if any, of the premium paid.

5. (1) Termination.—This contract may be terminated,

- (a) by the insurer giving to the insured fifteen days’ notice of termination by registered mail or five days’ written notice of termination personally delivered;
 - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the insurer,
- (a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but, in no event, shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and

- (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order or cheque payable at par.

(5) The fifteen days mentioned in clause (1)(a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

6. (1) Requirements After Loss.—Upon the occurrence of any loss of or damage to the insured property, the insured shall, if the loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,

- (a) forthwith give notice thereof in writing to the insurer;
- (b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,
 - (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,
 - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,
 - (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,
 - (iv) showing the amount of other insurances and the names of other insurers,
 - (v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,
 - (vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract.
 - (vii) showing the place where the property insured was at the time of loss;
- (c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;
- (d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any contract.

(2) The evidence furnished under clauses (1)(c) and (d) of this condition shall not be considered proofs of loss within the meaning of conditions 12 and 13.

7. Fraud.—Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, vitiates the claim of the person making the declaration.

8. Who may give notice and proof.—Notice of loss may be given and proof of loss may be made by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

9. (1) Salvage.—The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.

(2) The insurer shall contribute *pro rata* towards any reasonable and proper expenses in connection with steps taken by the insured and required under subparagraph (1) of this condition according to the respective interests of the parties.

10. Entry, Control, Abandonment.—After loss or damage to insured property, the insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisal or particular estimate of the loss or damage, but the insurer is not entitled to the control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

11. Appraisal.—In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

12. When Loss Payable.—The loss is payable within sixty days after completion of the proof of loss, unless the contract provides for a shorter period.

13. (1) Replacement.—The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within thirty days after receipt of the proofs of loss.

(2) In that event the insurer shall commence to so repair, rebuild, or replace the property within forty-five days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

14. Action.—Every action or proceeding against the insurer for the recovery of a claim under or by virtue of this contract is absolutely barred unless commenced within one year next after the loss or damage occurs.

15. Notice.—Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written

notice may be given to the insured named in the contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression “registered” means registered in or outside Canada.

149. Limitation of liability clause.—A contract containing,

- (a) a deductible clause; or
- (b) a co-insurance, average or similar clause; or
- (c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional,

shall have printed or stamped upon its face in red ink the words “The policy contains a clause that may limit the amount payable”, or the French equivalent failing which the clause is not binding upon the insured.

150. (1) Rateable contribution.—Where on the happening of any loss or damage to property insured there is in force more than one contract covering the same interest, each of the insurers under the respective contracts is liable to the insured for its rateable proportion of the loss, unless it is otherwise expressly agreed in writing between the insurers.

(2) **Effect of policy may not be postponed.**—For the purpose of subsection (1), a contract shall be deemed to be in force notwithstanding any term thereof that the policy will not cover, come into force, attach or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

(3) **Certain restrictions valid.**—Nothing in subsection (1) affects the validity of any divisions of the sum insured into separate items, or any limits of insurance on specified property, or any clause referred to in section 149 or any contract condition limiting or prohibiting the having or placing of other insurance.

(4) **Ascertainment of rateable proportions.**—Nothing in subsection (1) affects the operation of any deductible clause and,

- (a) where on contract contains a deductible, the *pro rata* proportion of the insurer under that contract shall be first ascertained without regard to the clause and then the clause shall be applied only to affect the amount of recovery under that contract; and
- (b) where more than one contract contains a deductible, the proportions of the insurers under those contracts shall be first ascertained without regard to the deductible clauses and then the highest deductible shall be pro rated among the insurers with deductibles and these pro rated amounts shall affect the amount of recovery under those contracts.

(5) **Idem.**—Nothing in subsection (4) shall be construed to have the effect of increasing the proportional contribution of an insurer under a contract that is not subject to a deductible clause.

(6) **Insurance on identified articles.**—Notwithstanding subsection (1), insurance on identified articles is a first loss insurance as against all other insurance.

151. Special stipulations.—Where a contract,

- (a) excludes any loss that would otherwise fall within the coverage prescribed by section 144; or
- (b) contains any stipulation, condition or warranty that is or may be material to the risk including, but not restricted to, a provision in respect to the use, condition location or maintenance of the insured property, the exclusion, stipulation, condition or warranty is not binding upon the insured, if it is held to be unjust or unreasonable by the court before which a question relating thereto is tried.

152. (1) Subrogation.—The insurer, upon making a payment or assuming liability therefor under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce such rights.

(2) **Where amount recovered is not sufficient to indemnify.**—Where the net amount recovered, after deducting the costs of recovery, is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively.

Premium Notes and Assessments

153. (1) Application of ss. 154 to 170.—Sections 154 to 170 apply only to mutual and cash-mutual fire insurance corporations and, except sections 155, 156 and 157, to mutual livestock and mutual weather insurance corporations that carry on business on the premium note plan or under the Fire Mutuals Guarantee Fund.

(2) **Application to Fire Mutuals Guarantee Fund.**—Sections 155, 156, 157, 159, 160, 161, 162, 163 and 164 do not apply in respect of contracts of insurance to which the Fire Mutuals Guarantee Fund is applicable.

(3) **Insurance on premium note plan.**—No licensed insurer shall carry on, the premium note plan or under the Fire Mutuals Guarantee Fund, any class of insurance other than five, livestock and weather insurance, but a mutual insurance company incorporated for the purpose of undertaking contracts of fire insurance on the premium note plan, may also insure for the classes of insurance as specified in subsection 149(13) of the *Corporations Act*.

(4) **Idem.**—Notwithstanding subsection (1), sections 165, 166 and 169 also apply to a joint stock insurance company if all of the shares of the company are owned by one or more mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund.

(5) **Application of ss. 154 to 170.**—Sections 154 to 170 apply only to contracts made in Ontario.

154. (1) Insurer may accept premium notes.—The insurer may accept the premium note of the insured for insurance and may undertake contracts in consideration thereof and such notes are subject to cash payments and assessments for the losses, expenses and reserve of the insurer in the manner hereinafter provided.

(2) Form of note.—The premium note shall be, in English or French, in the form prescribed by Schedule A.

(3) Premium note.—Nothing but the notice provided by section 167 shall be written upon the same paper upon which the premium note is written, and a contravention of this section renders the premium note void.

155. Minimum rates.—The rate to be charged or taken by way of premium note for insuring agricultural property, other than brick, stone or concrete dwellings, shall be not less than \$3 for three years for every \$100 of insurance, and the minimum rate upon other property may be increased or decreased relatively with the risk according to the nature of the property.

156. (1) Minimum cash payment.—Subject to subsection (3), the directors shall require at the time of the application for insurance of agricultural property, other than brick, stone or concrete dwellings, a cash payment on the premium note of not less than 80 cents for three years for every \$100 of insurance and may require a larger or smaller cash payment at the time of the application for the insurance of other property, but not more than 60 per cent of any premium note shall be paid in cash at the time of the application for or of effecting the insurance.

(2) Reduction by directors.—The cash payment required at the time of the application for insurance of agricultural property, other than brick, stone or concrete dwellings, may be reduced with the approval of the Superintendent by the directors when and so long as the surplus of the insurer is not less than 25 cents for every \$100 of the total net amount at risk.

(3) Payment by annual instalments.—Instead of requiring the cash payment to be paid in full at the time of the application for insurance, the directors may make the cash payment payable in three equal annual instalments of not less than 30 cents each for every \$100 of insurance on agricultural property, other than brick, stone or concrete dwellings, and proportionately on other property, the first of which shall be due and payable at the time of the application for insurance and the remaining instalments shall be respectively due and payable on the first day of each subsequent year of the term of insurance.

(4) Definition.—In this section and in section 157, “surplus” means the assets of the insurer other than the premium note residue after deducting therefrom all liabilities of the insurer (other than contingent liabilities on unmatured contracts) and the proportion of cash payments and instalments thereof paid in advance applicable to unexpired policy contracts.

157. (1) Refund from surplus.—The directors may declare a refund from surplus,

(a) if on the effective date of the refund the net surplus of the insurer after deducting

the total amount of the refund is, in terms of cents per hundred dollars of net insurance in force, not less than the amount set out in the following table, or, in the case of an insurer with less than \$2,000,000 of net insurance in force, such other amount as may be approved by the Superintendent;

- (b) if, except as hereinafter provided, the refund applies on all policies in force on the effective date thereof;
- (c) if the refund on each policy is in the same ratio to the total refund as the face value of the premium note is to the total face value of all premium notes in force at date of refund, or, that the refund on each policy is a fixed percentage of the annual instalment or of one-third of the cash payment for three years in advance, as the case may be; and
- (d) if the by-laws of the insurer require that refunds be payable only to members insured continuously in the insurer during the three years preceding the effective date of the refund.

TABLE

When the total net amount at risk is greater than	\$125,000,000—	\$0.40
When the total net amount at risk is greater than	75,000,000—	.50
When the total net amount at risk is greater than	25,000,000—	.60
When the total net amount at risk is greater than	10,000,000—	.70
When the total net amount at risk is greater than	5,000,000—	.80
When the total net amount at risk is greater than	2,000,000—	1.00

(2) **Application of subs. (1).**—Subsection (1) does not apply to cash-mutual fire insurance corporations, or to an insurer the surplus of which as defined by subsection 156(4) exceeds 10 per cent of the total amount at risk.

(3) **Where subs. (1) to apply.**—Subject to the exceptions in subsection (2), subsection (1) applies to any distribution of surplus to members, other than a distribution for the purposes of winding up or reinsurance of the insurer.

158. (1) Written application required.—No insurer shall make a contract on the premium note plan or to which the Fire Mutuals Guarantee Fund is applicable covering agricultural property for a term exceeding twelve months without a written application therefor signed by the applicant, or, in case of the absence of the applicant or his inability to make the application, by the applicant's agent, other than the agent of the insurer, or by a person having an insurable interest in the property.

(2) **Contents of application.**—Every written application shall set forth the name, address and occupation of the applicant, the description, location and occupancy of the property to be insured, its value, particulars of any mortgage, lien or other encumbrance thereon, the purpose for which and the location in which any movable property is deposited or used, particulars of any claims made by the applicant in respect of insured loss or damage by fire, whether any insurer has cancelled any fire insurance policy of or

refused fire insurance to the applicant, particulars of any other fire insurance on the same property, and such other information as the insurer or the Superintendent may require.

159. (1) Assessments.—The cash payment or instalments thereof required to be paid by section 156 at the time of the application for insurance shall be applied in part payment of the premium note, and the premium note residue is subject to assessments by the directors, with the approval of the Superintendent, in such sums and at such times as they may determine for reserve and for losses and expenses incurred during the currency of the policies for which the notes were given.

(2) **When due.**—An assessment is due and payable within thirty days after notice stating the amount and date of the assessment has been given in the manner hereinafter provide.

(3) **How fixed.**—An assessment shall be fixed as a percentage of the face amount of the premium note, and all assessments are payable on the same date and at the same rate per cent.

160. (1) Penalty for default in payments.—Default in making the cash payment or any instalment thereof within thirty days after notice of it becoming due or of its non-payment when due has been given in the manner hereinafter provided, or default, in paying any assessment authorized by the directors within thirty days after notice has been given as required by subsection 159(2), unless the directors determine otherwise, renders the contract of insurance void as to all claims for loss occurring during the time of default, but, subject thereto, the contract is revived if and when the cash payment or instalments thereof or the assessment so in default has been paid.

(2) **Liability of insured.**—Nothing in this Act relieves the insured of his liability to pay the cash payment and all assessments lawfully imposed by the directors during the full term of the policy or within forty days thereafter in respect of which the prescribed notice has been given or prejudices the right of the insurer after giving the required notice to sue for and recover the same with the costs of the suit.

(3) **Evidence of amount due insurer.**—Where an action is brought to recover an assessment, the certificate of the secretary of the insurer specifying the assessment and the amount due on the note in respect of such assessment is admissible in evidence as proof thereof in any court.

161. (1) Notice.—The notices required to be given by sections 159 and 160 are sufficient if mailed to the person by whom the cash payment, or any instalment thereof, or the assessment, as the case may be, is payable, addressed to his post office address given in the original application, or otherwise given in writing, to the insurer, and, if it states the register number of the contract, the time when, and the place where, the amount is payable.

(2) **Notice to contain s. 160(1).**—Subsection 160(1) shall be printed in full upon the face of all such notices.

(3) **Notice to mortgagee.**—If the property insured has been mortgaged and the insurer has assented to the mortgage, the notices respecting assessments and cash payments required to be mailed to the payee shall also be mailed to the mortgagee if his post

office address is known to the insurer, and, if notice is not so given, the contract shall be deemed to be valid and subsisting as to the interest of the mortgagee.

162. Return of premium note on termination of insurance.—Forty days after the expiration of the term of insurance or after the insured has sustained a total loss in respect of the property insured, the premium note given for the term is void except as to the cash payment or instalments thereof remaining unpaid and as to lawful assessments of which the prescribed written notice has been given to the maker of the premium note during the currency of the policy or within such period of forty days, and on the expiration of such period the premium note shall upon application therefor be surrendered to the maker, if all liabilities with which the premium note is chargeable have been paid.

163. Assessments may be retained out of insurance money.—If there is a loss on property insured, the directors may retain out of the insurance money the cash payment or any instalments thereof, or any lawful assessment due and payable and remaining unpaid by the insured.

164. Reinsurance.—The directors may reinsure any risk undertaken on the premium note plan with any other insurer of the same class, and may authorize the execution of a premium note by the proper officer of the insurer, and the insurer in respect of such reinsurance contract has the same rights and is subject to the same obligations as a member of the reinsurer.

165. (1) General reinsurance agreement.—Subject to the approval of the Superintendent, the directors of an insurer licensed to transact insurance on the premium note plan or to which the Fire Mutuals Guarantee Fund is applicable may enter into a general reinsurance agreement with any other insurer of the same class for the reinsurance of risks on such terms and conditions as are agreed upon.

(2) Policies and notes unnecessary.—Such agreement may dispense with the issue of policies and the execution of premium notes and may provide for reinsurance on the cash plan.

(3) Writing and seals.—Such agreement shall be in writing and under the corporate seals of the parties thereto.

(4) Mutual insurance corporations.—A mutual insurance corporation incorporated under subsection 148(3) of the *Corporations Act* shall be deemed to be an insurer of the same class under subsection (1) and under subsection 166(4).

166. (1) Compulsory reinsurance.—Subject to subsection (4), no insurer shall undertake any risk on the premium note plan or under a contract to which the Fire Mutuals Guarantee Fund is applicable that is subject to the hazard of a single fire for an amount greater than that allowed by the following table unless the risk is reinsured to an amount sufficient to reduce the net ability of the insurer to the amount authorized in the table:

TABLE

Where the total amount at risk is less than \$5,000,000	\$4,000
Where the total amount at risk is \$5,000,000 or	

more but less than \$10,000,000	6,000
Where the total amount at risk is \$10,000,000 or more	8,000

(2) **Meaning of risk subject to hazard of single fire.**—A risk subject to the hazard of a single fire shall be deemed to include, in the case of agricultural property, other than brick, stone or concrete dwellings, the total amount at risk on barns, outbuildings, contents, machinery, and all other items in connection therewith except live stock or a dwelling distant more than 80 feet from any other insured farm building, and in all other cases the total amount at risk on buildings or their contents where the buildings are distant less than 80 feet from each other.

(3) **Penalty for failure to reinsure.**—Where an insurer fails to reinsure a risk that is subject to hazard of a single fire and for an amount greater than that allowed by the table set out in subsection (1), the Commissioner, on the report of the Superintendent, may suspend or cancel the licence of the insurer.

(4) **Exception to subss. (1), (5).**—An insurer may undertake risks on the premium note plan or under a contract to which the Fire Mutuals Guarantee Fund is applicable in excess of the amounts authorized by subsections (1) and (6) where it has entered into a general reinsurance agreement with other insurers of the same class, approved by the Superintendent, whereby each insurer party to the agreement is provided with reinsurance on a plan covering in whole or in part the amount of losses in excess of its normal loss ratio as determined under the provisions of the plan.

(5) **Idem.**—For the purposes of subsection (4) and subsection 165 (1), mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund and joint stock insurance companies that participate in the Fund shall be deemed to be in the same class.

(6) **Reinsurance re weather insurance.**—Subject to subsection (4), no mutual insurance corporation incorporated to transact fire insurance on the premium note plan or under the Fire Mutuals Guarantee Fund and no joint stock insurance company that participates in the Fund shall undertake contracts of weather insurance unless all liability for loss in excess of \$100 on any risk covered by weather insurance is reinsured with a licensed weather company or a mutual insurance corporation incorporated pursuant to subsection 148(3) of the *Corporations Act*.

(7) **Idem.**—The reinsurance requirement under subsection (6) with respect to weather insurance does not apply to a mutual fire insurance corporation without guarantee capital stock that is restricted by its licence to insuring the plant and stock of millers and grain dealers used in connection with the grain trade, and the dwellings, outbuildings and contents thereof owned by such millers and grain dealers of their employees, against fire and any other class or classes of insurance set out in section 47.

(8) **Rights of insured.**—Nothing in this section renders a contract invalid as against the insured.

(9) **Exception.**—This section does not apply to an insurer that is restricted by its licence to the insurance against fire and lighting of buildings, plant and stock of millers and grain dealers used in connection with the grain trade and the dwellings, outbuildings

and contents thereof owned by such millers and grain dealers or their employees when and so long as its surplus as defined by subsection 156(4) exceeds 10 per cent of the total amount at risk.

167. Actions in small claims court.—An action upon a premium note or for an assessment thereon that is within the monetary jurisdiction of the Small Claims Court may be brought in the division of the Small Claims Court in which the head office or an agency of the insurer is located, if and only if within the body of the note, or across the face thereof, there was at the time of the making of it printed in conspicuous type, or in ink of a colour different from any other in or on the note, a notice to the following effect: An action that may be brought in the Small Claims Court in respect or on account of this note, or any sum to be assessed on this note, may be brought against the maker of this note in the division of the Small Claims Court in which the head office or an agency of the insurer is located.

168. Note not to be a lien on land.—A premium note does not create a lien upon the land on which the insured property is situate.

169. (1) Fire Mutuals Guarantee Fund.—The Superintendent may approve the terms of an agreement to establish and maintain a fund to be held in trust by a trust company registered under the *Loan and Trust Corporations Act*, such fund to be known in English as the Fire Mutuals Guarantee Fund and in French as Fonds mutuel d'assurance-incendie.

(2) Parties to agreement for Fund.—Subject to the approval of the Superintendent, the following parties may enter into the agreement under subsection (1):

1. Insurers licensed to transact business on the premium note plan.
2. Joint stock insurance companies all the shares of which are owned by one or more mutual insurance corporations that participate in the Fund.
3. Mutual insurance corporations incorporated under subsection 148(3) of the *Corporations Act*.

(3) Purposes of Fund.—The assets of the Fire Mutuals Guarantee Fund may be used as directed by a board of trustees established under the agreement, with the approval of the Superintendent, for the purpose of satisfying claims by policyholders and third parties that cannot be met by the assets of an insurer who is a party to the agreement.

(4) Assests of Fund.—The assests of the Fund shall,

- (a) be maintained at no less than a book value of \$1,000,000 including the value of any assessments made to restore the book value of \$1,000,000, or such further amount as may be specified from time to time by the Superintendent;
- (b) be maintained or increased by assessment on parties to the agreement on the basis set out in the agreement referred to in subsection (1);
- (c) be an authorized investment for the purposes of this Act and the value to be included by each licensed insurer shall be proportional to its contribution to the

trust and shall be subject to examination by the Superintendent in the same manner as the other assets and property of licensed insurers;

- (d) be invested and valued in the same manner and be subject to the same restrictions as the assets of a mutual fire insurance corporation carrying on business on the premium note plan.

(5) **Relief from assessment.**—No assessment referred to in clause (4)(b) shall be paid by an insurer if its effect would be to reduce the surplus of that insurer below the minimum amount specified by the Superintendent, and such a waiver of an assessment shall not be cause for the insurer's expulsion from the Fund.

(6) **Interest of Superintendent in Fund.**—The Superintendent shall be deemed to have an interest in the Fund as representative of all persons who may be claimant against insurers that are parties to the agreement and the trustess shall from time to time furnish the Superintendent with such information and accounts with respect to the Fund as the Superintendent may require.

(7) **Withdrawal from agreement.**—The Superintendent may permit the withdrawal from the trust agreement of an insurer upon terms and conditions or, where an insurer is in default of payment of its assessment under the agreement, the Superintendent may withdraw his approval given under subsection (2).

(8) **Ceasing to issue contracts on premium note plan.**—An insurer that becomes a party to the agreement referred to in subsection (1) shall, except with the approval of the Superintendent, cease to undertake contracts of insurance or renew existing contracts of insurance on the premium note plan.

(9) **Application of Act.**—All parties to the agreement and their officers and directors, shall be deemed to be persons engaged in the business of insurance for the purposes of this Act and the regulations and any contravention of the trust agreement constitutes an offence.

(10) **Passing of accounts.**—An account filed with the Superintendent under subsection (6), except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and the trustees' administration thereof, unless the Superintendent, within six months of the date upon which the account is filed with him or her, requires in writing that such account be filed and passed before a judge of the Ontario Court (General Division).

(11) **Idem.**—The provisions of the *Estates Act* and the rules made thereunder and of the *Trustee Act* with respect to the passing of accounts of the trustees apply, with necessary modifications, to the passing of accounts under subsection (10).

170. (1) When execution upon judgment against insurer.—No execution shall issue against a mutual or cash-mutual insurer upon a judgment until after the expiration of sixty days from the recovery thereof, but this section does not apply to a judgment recovered on a contract of insurance where more than 60 per cent of the premium or premium note was paid in cash at the time of the insurance or the application therefor.

(2) **When order may be made for issue.**—A judge of the Ontario Court (General Division) or the master, after the recovery of a judgment against the insurer and upon the motion of the judgment creditor and upon notice to the insurer, may inquire into the facts, and, if he or she finds that more than 60 per cent of the premium note was paid in cash at the time of the insurance or upon the application therefor, he or she may direct that execution be issued forthwith upon such judgment.

PART V

LIFE INSURANCE

171. Definitions.—In this Part,

“application”.—“application” means an application for insurance or for the reinstatement of insurance;

“beneficiary”.—“beneficiary” means a person, other than the insured or his personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

“contract”.—“contract” means a contract of life insurance;

“court”.—“court” means the Ontario Court (General Division) or a judge thereof;

“creditor’s group insurance”.—“creditor’s group insurance” means insurance effected by a creditor in respect of the lives of the creditor’s debtors whereby the lives of the debtors are insured severally under a single contract;

“declaration”.—“declaration” means an instrument signed by the insured,

(i) with respect to which an endorsement is made on the policy, or

(ii) that identifies the contract, or

(iii) that describes the insurance or insurance fund or a part thereof,

in which the insured designates, or alters or revokes the designation of, the insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable;

“family insurance”.—“family insurance” means insurance whereby the lives of the insured and one or more persons related to the insured by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

“group insurance”.—“group insurance” means insurance, other than creditor’s group insurance and family insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

“group life insured”.—“group life insured” means a person whose life is insured by a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent upon, or related to, him or her;

“instrument”.—“instrument” includes a will;

“insurance”.—“insurance” means life insurance;

“insured”.—“insured”,

(i) in the case of group insurance, means, in the provisions of this Part relating to the designation of beneficiaries and the rights and status of beneficiaries, the group life insured, and

(ii) in all other cases, means the person who makes a contract with an insurer;

“will”.—“will” includes a codicil.

Application of Part

172. (1) Application.—Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in Ontario on or after the 1st day of July, 1962, and, subject to subsections (2) and (3), applies to a contract made in Ontario before that day.

(2) **Beneficiary for value.**—The rights and interests of a beneficiary for value under a contract that was in force immediately prior to the 1st day of July, 1962 are those provided in Part V of *The Insurance Act*, being chapter 190 of the Revised Statutes of Ontario, 1960, as it existed immediately prior to that day.

(3) **Preferred beneficiary.**—Where the person who would have been entitled to the payment of insurance money, if the money had become payable immediately prior to the 1st day of July, 1962, was a preferred beneficiary within the meaning of Part V of *The Insurance Act*, being chapter 190 of the Revised Statutes of Ontario, 1960, as it existed immediately prior to that day, the insured may not, except in accordance with that Part,

- (a) alter or revoke the designation of a beneficiary; or
- (b) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Part.

173. Group insurance.—In the case of a contract of group insurance made with an insurer authorized to transact insurance in Ontario at the time the contract was made, this Part applies in determining,

- (a) the rights and status of beneficiaries if the group life insured was resident in Ontario at the time he became insured; and
- (b) the rights and obligations of the group life insured if he was resident in Ontario at the time he became insured.

Issuance of Policy and Content Thereof

174. (1) Insurer to issue policy.—An insurer entering into a contract shall issue a policy.

(2) **Documents forming contract.**—Subject to subsection (3), the provisions in,

(a) the application; and

(b) the policy; and

(c) any document attached to the policy when issued; and

(d) any amendment to the contract agreed upon in writing after the policy is issued, constitute the entire contract.

(3) **Contract of fraternal society.**—In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant constitute the entire contract.

(4) **Copy of application.**—An insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

175. (1) Exceptions.—This section does not apply to a contract,

(a) of group insurance; or

(b) of creditor's group insurance; or

(c) made by a fraternal society.

(2) **Contents of policy.**—An insurer shall set forth the following particulars in the policy:

1. The name or a sufficient description of the insured and of the person whose life is insured.

2. The amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable.

3. The amount, or the method of determining the amount, of the premium and the period of grace, if any, within which it may be paid.

4. Whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer.

5. The conditions upon which the contract may be reinstated if it lapses.

6. The options, if any,

(a) of surrendering the contract for cash;

(b) of obtaining a loan or an advance payment of the insurance money; and

(c) of obtaining paid-up or extended insurance.

176. Contents of group policy.—In the case of a contract of group insurance or of creditor's group insurance, an insurer shall set forth the following particulars in the policy:

1. The name or a sufficient description of the insured.
2. The method of determining the persons whose lives are insured.
3. The amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable.
4. The period of grace, if any, within which the premium may be paid.
5. Whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer.

177. Contents of group certificate.—In the case of a contract of group insurance, an insurer shall issue, for delivery by the insured to each group life insured, a certificate or other document in which are set forth the following particulars:

1. The name of the insurer and an identification of the contract.
2. The amount, or the method of determining the amount, of insurance on the group life insured and on any person whose life is insured under the contract as a person dependent upon, or related to, him.
3. The circumstances in which the insurance terminates and the rights, if any, upon such termination, of the group life insured or of any person whose life is insured under the contract as a person dependent upon, or related to, him.

Conditions Governing Formation of Contract

178. (1) Insurable Interest.—Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

(2) **Exceptions.**—A contract is not void for lack of insurable interest,

- (a) if it is a contract of group insurance; or
- (b) if the person whose life is insured has consented in writing to the insurance being placed on his life.

(3) **Consent of minor.**—Where the person whose life is insured is under the age of sixteen years, consent to insurance being placed on his life may be given by one of his parents or by a person standing *in loco parentis* to him.

179. Insurable interest, defined.—Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his own life and in the life of,

- (a) his child or grandchild;
- (b) his spouse;
- (c) any person upon whom he is wholly or in part dependent, for, or from whom he is receiving, support or education;
- (d) his employee; and
- (e) any person in the duration of whose life he has a pecuniary interest.

180. (1) Contract taking effect.—Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless,

- (a) the policy is delivered to an insured, the insured's assign or agent, or to a beneficiary;
- (b) payment of the first premium is made to the insurer or its authorized agent; and
- (c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

(2) Delivery to agent.—Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in clause (1)(a), it shall be deemed, but not to the prejudice of the insured, to have been delivered to the insured.

181. (1) Default in paying premium.—Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed not to have been paid.

(2) Payment by registered letter.—Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter.

182. (1) Who may pay premium.—Except in the case of group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay.

(2) Period of grace.—Where a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of,

- (a) thirty days or, in the case of an industrial contract, twenty-eight days from and excluding the day on which the premium is due; or
- (b) the number of days, if any, specified in the contract for payment of an overdue premium,

which is the longer period.

(3) Contract in force during grace period.—Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and

before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding 6 per cent per annum, and the balance, if any, of the current year's premium, may be deducted from the insurance money.

183. (1) Duty to disclose.—An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the person's knowledge that is material to the insurance and is not so disclosed by the other.

(2) Failure to disclose.—Subject to section 184, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer.

184. (1) Exceptions.—This section does not apply to a misstatement of age or to disability insurance.

(2) Incontestability.—Subject to subsection (3), where a contract has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose or a misrepresentation of a fact required to be disclosed by section 183 does not, in the absence of fraud, render the contract voidable.

(3) Incontestability in group insurance.—In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but, if evidence of insurability is specifically requested by the insurer, the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of that person, in which event it is not, in the absence of fraud, voidable.

185. Non-disclosure by insurer.—Where an insurer fails to disclose or misrepresents a fact material to the insurance, the contract is voidable by the insured, but, in the absence of fraud, the contract is not by reason of such failure or misrepresentation voidable after the contract has been in effect for two years.

186. (1) Exceptions.—This section does not apply to a contract of group insurance or of creditor's group insurance.

(2) Misstatement of age.—Subject to subsection (3), where the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age.

(3) Limitation of insurable age.—Where a contract limits the insurable age and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than five years from the date the contract takes effect, voidable by the insurer within sixty days after it discovers the error.

187. Misstatement of age in group insurance.—In the case of a contract of group insurance or of creditor's group insurance, a misstatement to the insurer of the age of a

person whose life is insured does not of itself render the contract voidable, and the provisions, if any, of the contract with respect to age or misstatement of age apply.

188. (1) Effect of suicide.—Where a contract contains an undertaking, express or implied, that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

(2) Suicide and reinstatement.—Where a contract provides that in case a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement.

189. (1) Exceptions.—This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

(2) Reinstatement.—Where a contract lapses and the insured within two years applies for reinstatement of the contract, if within that time the insured,

(a) pays the overdue premiums and other indebtedness under the contract to the insurer, together with interest at the rate specified in the contract, but not exceeding 6 per cent per annum, compounded annually; and

(b) produces,

(i) evidence satisfactory to the insurer of the good health, and

(ii) other evidence satisfactory to the insurer of the insurability,

of the person whose life was insured,

the insurer shall reinstate the contract.

(3) Exceptions.—Subsection (2) does not apply where the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

(4) Application of other sections.—Sections 183 and 184 apply with necessary modifications to reinstatement of a contract.

Designation of Beneficiaries

190. (1) Designation of beneficiary.—An insured may in a contract or by a declaration designate the insured's personal representative or a beneficiary to receive insurance money.

(2) Change in designation.—Subject to section 191, the insured may from time to time alter or revoke the designation by a declaration.

(3) Meaning of "heirs", etc.—A designation in favour of the "heirs", "next of kin" or "estate" of the insured, or the use of words of like import in a designation, shall be deemed to be a designation of the personal representative of the insured.

191. (1) Designation of beneficiary irrevocably.—An insured may in a contract,

or by a declaration other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured or of the insured's creditors and does not form part of the insured's estate.

(2) **Attempted designation.**—When the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

192. (1) Designation in invalid will.—A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(2) **Priorities.**—Notwithstanding the *Succession Law Reform Act*, a designation in a will is of no effect against a designation made later than the making of the will.

(3) **Revocation.**—Where a designation is contained in a will, if subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(4) **Idem.**—Where a designation is contained in an instrument that purports to be a will, if subsequently the instrument is valid as a will would be revoked by operation of law or otherwise, the designation is thereby revoked.

193. (1) Trustee for beneficiary.—An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

(2) **Payment to trustee.**—A payment by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.

194. (1) Beneficiary predeceasing life insured.—Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable,

- (a) to the surviving beneficiary; or
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal share; or
- (c) if there is no surviving beneficiary, to the insured or the insured's personal representative.

(2) **Several beneficiaries.**—Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares.

195. Right to sue.—A beneficiary may enforce for the beneficiary's own benefit, and a trustee appointed pursuant to section 193 may enforce as trustee, the payment of insurance money made payable to him, her or it in the contract or by a declaration and

in accordance with the provisions thereof, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative.

196. (1) Insurance money free from creditors.—Where a beneficiary is designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) Contract exempt from seizure.—While a designation in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure.

Dealings with Contract During Lifetime of Insured

197. Insured dealing with contract.—Where a beneficiary,

(a) is not designated irrevocably;

(b) is designated irrevocably but has attained the age of eighteen years and consents, the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided therein or in this Part or as may be agreed upon with the insurer.

198. (1) Insured entitled to dividends.—Notwithstanding the designation of a beneficiary irrevocably, the insured is entitled while living to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

(2) Insurer may use dividends.—Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.

199. (1) Transfer of ownership.—Notwithstanding the *Succession Law Reform Act*, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract,

(a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of his or her estate; and

(b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(2) Successive owners.—Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, upon the death of the insured, have successively, on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with necessary modifications, to each of such persons and to his or her rights and interests in the contract.

(3) **Saving.**—Notwithstanding any nomination made pursuant to this section, the insured may, prior to his or her death, assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer.

200. (1) Interest of assignee.—Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against,

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary other than one designated irrevocably as provided in section 191 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

(2) **Effect on beneficiary's rights.**—Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) **Assignee deemed to be insured.**—Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(4) **Prohibition against assignment.**—A provision in a contract to the effect that the rights or interests of the insured, or, in the case of group insurance, the group life insured, are not assignable is valid.

201. Group life insured, enforcing rights.—A group life insured may in his or her own name enforce a right given to him or her under a contract, subject to any defence available to the insurer against him or her or against the insured.

Minors

202. Capacity of minors.—Except in respect of his or her rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years,

- (a) to make an enforceable contract; and
- (b) in respect of a contract.

Proceedings Under Contract

203. Proof of claim.—Where an insurer receives sufficient evidence of,

- (a) the happening of the event upon which insurance money becomes payable;
- (b) the age of the person whose life is insured;
- (c) the right of the claimant to receive payment; and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within thirty days after receiving the evidence, pay the insurance money to the person entitled thereto.

204. (1) Place of payment.—Subject to subsection (4), insurance money is payable in Ontario.

(2) **Dollars.**—Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars.

(3) **Payment outside Ontario.**—Where a person entitled to receive insurance money is not domiciled in Ontario, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on that person's behalf by the law of the domicile of the payee.

(4) **Exception for group insurance.**—In the case of a contract of group insurance, insurance money is payable in the province or territory of Canada in which the group life insured was resident at the time he or she became insured.

205. Action in Ontario.—Notwithstanding where a contract was made, an action on it may be brought in a court by a resident of Ontario if the insurer was authorized to transact insurance in Ontario at the time the contract was made or at the time the action is brought.

206. (1) Limitation of action.—Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money shall not be commenced more than one year after the furnishing of the evidence required by section 203 or more than six years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.

(2) **Exception.**—Where a declaration has been made under section 209, an action or proceeding to which reference is made in subsection (1) shall not be commenced more than one year after the date of the declaration.

207. (1) Documents affecting title.—Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy, or a copy verified by statutory declaration, of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

(2) **Saving.**—Subsection (1) does not affect the rights or interests of any person other than the insurer.

208. Declaration as to sufficiency of proof.—Where an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by section 203 and there is no other question in issue except a question under section 209, the insurer or the claimant may, before or after action is brought and upon least thirty days notice, apply to the court for a declaration as to the sufficiency of the evidence furnished, and the court may make the declaration or may direct what further evidence shall be furnished and on the furnishing thereof may make the declaration or, in special circumstances, may dispense with further evidence.

209. Declaration as to presumption of death.—Where a claimant alleges that the person whose life is insured should be presumed to be dead by reason of his not having been heard of for seven years and there is no other question in issue except a question under section 208, the insurer or the claimant may, before or after action is brought and upon at least thirty days notice, apply to the court for a declaration as to presumption of the death and the court may make the declaration.

210. (1) Court may make order.—Upon making a declaration under section 208 or 209, the court may make such order respecting the payment of the insurance money and respecting costs as it deems just and, subject to section 212, a declaration or direction or order made under this subsection is binding upon the applicant and upon all persons to whom notice of the application has been given.

(2) Payment under order.—A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid.

211. Stay of proceedings.—Unless the court otherwise orders, an application made under section 208 or 209 operates as a stay of any pending action with respect to the insurance money.

212. Appeal.—An appeal lies to the Divisional Court from any declaration, direction or order made under section 208, section 209 or subsection 210(1).

213. Power of court.—Where the court finds that the evidence furnished under section 203 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make such other order as it considers just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs.

214. Payment into court.—Where an insurer admits liability for insurance money and it appears to the insurer that,

- (a) there are adverse claimants; or
- (b) the whereabouts of a person entitled is unknown; or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, apply to the court *ex parte* for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

215. Simultaneous deaths.—Unless a contract or a declaration otherwise provides where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 194(1) as if the beneficiary had predeceased the person whose life is insured.

216. (1) Insurance money payable in instalments.—Subject to subsections (2) and (3), where insurance money is payable in instalments and a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary has not the right to commute the instalments or to alienate or assign the beneficiary's interest therein, the insurer shall not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not, in the hands of the insurer, subject to any legal process except an action to recover the value of necessities supplied to the beneficiary or the beneficiary's children who are minors.

(2) Communication by beneficiary.—A court may, upon the application of a beneficiary and upon at least ten days notice, declare that in view of special circumstances,

- (a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money; or
- (b) the beneficiary may alienate or assign the beneficiary's interest in the insurance money.

(3) Commutation after death of beneficiary.—After the death of the beneficiary, his or her personal representative may, with the consent of the insurer, commute any instalments of insurance money payable to the beneficiary.

(4) Interpretation.—In this section, “instalments” includes insurance money held by the insurer under section 217.

217. (1) Insurer holding insurance money.—An insurer may hold insurance money,

- (a) subject to the order of an insured or a beneficiary; or
- (b) upon trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party, or by a declaration, with interest at a rate agreed upon therein or, where no rate is agreed upon, at the rate declared from time to time by the insured in respect of insurance money so held by it.

(2) Exception.—The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing.

218. Court may order payment.—Where an insurer does not within thirty days after receipt of the evidence required by section 203 pay the insurance money to some person competent to receive it or into court, the court may, upon application of any person, order that the insurance money or any part thereof be paid into court, or may make such other order as to the distribution of the money as it deems just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid.

219. Costs.—The court may fix without taxation the costs incurred in connection with an application or order made under section 214 or 218, and may order them to be

paid out of the insurance money or by the insurer or the applicant or otherwise as it considers just.

220. (1) Minors.—If an insurer admits liability for insurance money payable to a minor, the insurer shall pay the money and any applicable interest, less the applicable costs mentioned in subsection (2), into court to the credit of the minor.

(2) Costs.—The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1) the sum of \$10 where the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

(3) Procedure.—No order is necessary for payment into court under subsection (1), but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and, upon such payment being made, the insurer shall forthwith notify the Children's Lawyer and deliver to him or her a copy of the affidavit.

(4) Authorized payments.—An insurer may, despite subsection (1), pay insurance money and applicable interest payable to a minor to,

- (a) the guardian of the property of the minor, appointed under section 47 of the *Children's Law Reform Act*; or
- (b) a person referred to in subsection 51(1) of the *Children's Law Reform Act*, if the payment does not exceed the amount set out in that subsection. S.O. 1993, c. 10, s. 13(1), (2); S.O. 1994, c. 27, s. 43(2).

221. Beneficiary under disability.—Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

Miscellaneous Provisions

222. Presumption against agency.—No officer, agent or employee of an insurer and no person soliciting insurance, whether or not the person is an agent of the insurer, shall, to the prejudice of the insured, be deemed to be the agent of the insured in respect of any question arising out of a contract.

223. Insurer giving information.—An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

PART VI

AUTOMOBILE INSURANCE

224. (1) Definitions.—In this Part,

“automobile”.—“automobile”, includes a motor vehicle required under any Act to be insured under a motor vehicle liability policy;

“contract”.—“contract” means a contract of automobile insurance that,

- (a) is undertaken by an insurer that is licensed to undertake automobile insurance in Ontario, or
- (b) is evidenced by a policy issued in another province or territory of Canada, the United States of America or a jurisdiction designated in the *Statutory Accident Benefits Schedule* by an insurer that has filed an undertaking under section 226.1. (“contrat”)

“excluded driver”.—“excluded driver” means a person named as an excluded driver in an endorsement under section 249;

“fault determination rules”.—“fault determination rules” means the rules prescribed under paragraph 21 of subsection 121(1);

“health care”.—“health care” includes all goods and services for which payment is provided by the medical, rehabilitation and attendant care benefits provided for in the *Statutory Accidents Benefits Schedule*. (“soins de santé”)

“insured”.—“insured” means a person insured by a contract whether named or not and includes every person who is entitled to no-fault benefits under the contract whether or not described therein as an insured person;

“occupant”.—“occupant”, in respect of an automobile, means,

- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile;

“spouse”.—“spouse” means either of a man and a woman who,

- (a) are married to each other,
- (b) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Act, or
- (c) are not married to each other and have cohabited continuously for a period of not less than three years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

“statutory accident benefits”.—“statutory accident benefits” means the benefits set out in the regulations under paragraphs 9 and 10 of subsection 121(1);

“Statutory Accident Benefits Schedule”.—“Statutory Accident Benefits Schedule” means the regulations under paragraphs 9 and 10 of subsection 121(1);

(2) **Transition**.—A reference to Schedule C in any other Act or in any regulation, contract or other instrument shall, in respect of events occurring after the 21st day of June, 1990, be deemed to be a reference to the *Statutory Accident Benefits Schedule* and a

reference to benefits under Schedule C shall be deemed to be a reference to statutory accident benefits.

(3) **Idem.**—Every contract to which subsection 268(1) applies shall be deemed to have been amended on the 22nd day of June, 1990, to include no-fault benefits in accordance with the *Statutory Accident Benefits Schedule*.

(4) **Idem.**—The benefits of a person who, before the 22nd day of June, 1990, was entitled to benefits under Schedule C shall be determined in accordance with the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as that Act read immediately before the 22nd day of June, 1990.

(5) **Idem.**—For the purposes of subsections (2) and (4), “Schedule C” means Schedule C to the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as that Act read before the 22nd day of June, 1990.

(6) **Additional benefits.**—An insurer, with the approval of the Commissioner, may offer optional benefits in excess of the benefits that must be provided under the *Statutory Accident Benefits Schedule*.

(7) **Idem.**—Optional benefits offered under subsection (6) shall be deemed to be statutory accident benefits and the *Statutory Accident Benefits Schedule* applies to them with necessary modifications. S.O. 1996, c. 21, s. 15.

225. Exception re: insured.—Except as provided in the *Statutory Accident Benefits Schedule*, the insured under a contract shall be deemed not to include any person who sustains loss or damage while any automobile insured under the contract is being used or operated by an excluded driver.

226. (1) Application of Part.—This Part does not apply to contracts insuring only against,

- (a) loss of or damage to an automobile while in or on described premises;
- (b) loss of or damage to property carried in or upon an automobile; or
- (c) liability for loss of or damage to property carried in or upon an automobile.

(2) **Idem.**—This Part does not apply to a contract providing insurance in respect of an automobile not required to be registered under the *Highway Traffic Act* unless it is insured under a contract evidenced by a form of policy approved under this Part.

(3) **Idem.**—This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has as security legal title to, an automobile and who does not have possession of the automobile.

226.1 Out-of-province insurers.—An insurer that issues motor vehicle liability policies in another province or territory of Canada, the United States of America or a jurisdiction designated in the *Statutory Accident Benefits Schedule* may file an undertaking with the Commission, in the form provided by the Commission, providing that the insurer’s motor vehicle liability policies will provide at least the coverage described in

sections 251, 265 and 268 when the insured automobiles are operated in Ontario. S.O. 1996, c. 21, s. 16.

Approval of Forms

227. (1) Approval of forms.—An insurer shall not use a form of any of the following documents in respect of automobile insurance unless the form has been approved by the Commissioner:

1. An application for insurance.
1. A policy, endorsement or renewal.
3. A claims form.
4. A continuation certificate.

(1.1) **Application for insurance.**—Paragraph 1 of subsection (1) does not apply if, in accordance with the regulations, the insurer uses a form of application for insurance that is prescribed by the regulations. S.O. 1996, c. 21, s. 17.

(2) **Approval of policies in special cases.**—Where, in the opinion of the Commissioner, any provision of this Part, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is inapplicable by reason of the requirements of any Act, he or she may approve a form of policy, or part thereof, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or endorsement in the form so approved is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit or add to any provision or condition of this Part.

(3) **Approval of extensions.**—The Commissioner may, if he or she considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in this Part.

(4) **Condition approval of extension.**—The Commissioner, in granting an approval under subsection (3), may require the insurer to charge an additional premium for the extension and to state that fact in the policy or in any endorsement.

(5) **Standard policies.**—The Commissioner may approve the form of standard policies containing insuring agreements and provisions in conformity with this Part for use by insurers in general.

(6) **Publication.**—If the Commissioner approves a form of standard policy, the Commissioner shall cause a copy of the form to be published in *The Ontario Gazette*, but it is not necessary to publish endorsement forms approved for use with the standard policy.

(7) **Revocation of approval.**—The Commissioner may revoke an approval given under this section, and, upon notification of the revocation in writing, no insurer shall thereafter use or deliver a form that contravenes the notification.

(8) **Reason for decision.**—The Commissioner shall, on request of any interested insurer, specify in writing his or her reasons for granting, refusing or revoking an approval of a form. S.O. 1993, c. 10, s. 14; S.O. 1996, c. 21, s. 17.

228. Application form.—Where so required by the regulations, no insurer shall use a form of application other than a prescribed form.

Other Information

229. (1) Information for applicants, etc.—An insurer or broker shall supply at such times as may be prescribed such information as may be prescribed to applicants for automobile insurance and to named insureds under contracts.

(2) **Information deemed to be part of application.**—Information supplied under subsection (1) by an insurer or by a broker on behalf of an insurer to an applicant for automobile insurance shall be deemed to be a part of the application. S.O. 1993, c. 10, s. 15(1), (2).

230. (1) Information from brokers.—A broker shall provide to an applicant for insurance the names of all the insurers with whom the broker has an agency contract relating to automobile insurance and all information obtained by the broker relating to quotations on automobile insurance for the applicant.

(2) **Request for written information.**—The broker shall provide the information referred to in subsection (1) in writing if the applicant so requests. S.O. 1996, c. 21, s. 18.

Application and Policy

231. Persons forbidden to act as agent.—No person carrying on the business of financing the sale or purchase of automobiles and no automobile dealer, insurance agent or broker and no officer or employee of such a person, dealer, agent or broker shall act as the agent of an applicant for the purpose of signing an application for automobile insurance.

232. (1) Copy of application in policy.—A copy of the written application, signed by the insured or his agent, or, if no signed application is made, a copy of the purported application, or a copy of such part of the application or purported application as is material to the contract, shall be embodied in, endorsed upon or attached to the policy when issued by the insurer.

(2) **Policy issued where no signed application.**—If no signed written application is received by the insurer prior to the issue of the policy, the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, a form of application to be completed and signed by the insured and returned to the insurer.

(3) **Insured entitled to copy.**—Subject to subsection (5), the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the

insured, the policy or a true copy thereof and every endorsement or other amendment to the contract.

(4) **Form of policy.**—Where a written application signed by the insured or his agent is made for a contract, the policy evidencing the contract shall be deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and, in that event, the insured shall be deemed to have accepted the policy unless within one week from the receipt of the notification he informs the insurer in writing that he rejects the policy.

(5) **Certificate of policy.**—If an insurer adopts a standard policy approved under subsection 227(5), it may, instead of issuing the policy, issue a certificate in a form approved by the Commissioner.

(5.1) **Effect of certificate.**—A certificate issued under subsection (5) is of the same force and effect as if it were the standard policy, subject to the limits and coverages shown by the insurer on the certificate and any endorsements issued with or subsequent to the certificate.

(5.2) **Copy of policy.**—At the request of an insured to whom a certificate has been issued under subsection (5), the insurer shall provide a copy of the standard policy approved by the Commissioner.

(6) **Application.**—Where a certificate is issued under subsection (5), subsection (8) of this section, and subsections 261(2) and 263(5.3), apply with necessary modifications.

(7) **Proof of terms of policy.**—Where an insurer issues a certificate under subsection (5), proof of the terms of the policy may be given by production of a copy of *The Ontario Gazette* containing the form of standard policy approved by the Commissioner.

(8) **Endorsement on forms.**—Upon every application form and policy, there shall be printed or stamped in conspicuous type a copy of subsection 233(1). S.O. 1993, c. 10, s. 16(1)-(3).

232.1 Inspection requirements.—Before issuing a policy in respect of an automobile, an insurer shall comply with the inspection requirements prescribed by the regulations. S.O. 1996, c. 21, s. 19.

233. (1) Misrepresentation or violation of conditions renders claim invalid.—Where,

- (a) an applicant for a contract,
 - (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or
 - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;
- (b) the insured contravenes a term of the contract or commits a fraud; or

- (c) the insured wilfully makes a false statement in respect of a claim unless the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

(2) **Statutory Accident benefits protected.**—Subsection (1) does not invalidate such statutory accident benefits as are set out in the *Statutory Accident Benefits Schedule*.

(3) **Use of application as defence.**—No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application therefor or, where no signed written application is made, in the purported application, or part thereof, that is embodied in, endorsed upon or attached to the policy.

(4) **Idem.**—No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to him in the purported application, or part thereof.

234. (1) Statutory conditions.—The conditions prescribed by the regulations made under paragraph 15.1 of subsection 121(1) are statutory conditions and shall be deemed to be part of every contract to which they apply and shall be printed in English or French in every policy to which they apply with the heading “Statutory Conditions” or “Conditions légales”, as may be appropriate.

(2) **Variation.**—No variation or omission of or addition to a statutory condition is binding on the insured.

(3) **Exceptions.**—Except as otherwise provided in the contract, the statutory conditions referred to in subsection (1) do not apply to the insurance required by section 265 or 268.

(4) **Definition.**—In subsection (1), “policy” does not include an interim receipt or binder. S.O. 1993, c. 10, s. 17.

Statutory Conditions 1 to 13.

[Repealed. S.O. 1993, c. 10, s. 17.]

235. [Repealed by S.O. 1993, c. 10, s. 18.]

236. (1) Notice of expiry or variation.—If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on varied terms, the insurer shall,

- (a) give the named insured not less than thirty days notice in writing of the insurer’s intention or proposal; or
- (b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer’s intention or proposal.

(2) **Idem.**—Subject to subsection (4), a broker to whom an insurer has given notice under clause (1)(b) shall give the named insured under the contract not less than thirty days notice in writing of the insurer's intention or proposal.

(3) **Reasons.**—Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal.

(4) **Exception.**—Where, before a broker is required to have given notice to a named insured under subsection (2), the broker places with another insurer a replacement contract containing substantially similar terms as the expiring contract, the broker is exempted from giving notice under subsection (2).

(5) **Effect of failure to comply.**—A contract of insurance is in force until there is compliance with subsections (1), (2) and (3).

(6) **Coming into force.**—This section comes into force on a day to be named by proclamation of the Lieutenant Governor.

237. (1) Limitation on termination.—If so required by the regulations and unless the insurer has complied therewith, an insurer shall not decline to issue or terminate or refuse to renew a contract in respect of such coverages and endorsements as may be set out in the regulations or decline to issue, terminate or refuse to renew any contract or refuse to provide or continue any coverage or endorsement on any ground set out in the regulations.

(2) **Information.**—The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine compliance with subsection (1).

(3) **Exemption.**—An insurer may apply to the Commissioner for an exemption from subsection (1).

(4) **Idem.**—An application for an exemption from compliance with subsection (1) shall be in a form approved by the Commissioner and shall be filed together with such information, materials and evidence as the Commissioner considers necessary.

(5) **Idem.**—The Commissioner may exempt an insurer in whole or in part from compliance with subsection (1) if, in the opinion of the Commissioner, compliance with the regulations would impair the solvency of the insurer or would cause the insurer to be in contravention of this Act or the regulations.

(6) **Non-application.**—Subsection (1) does not apply in respect of a contract if any payment in respect of premiums payable under the contract or under any ancillary agreement is overdue or if,

- (a) the insured has given false particulars of the described automobile to the prejudice of the insurer;
- (b) the insured has knowingly misrepresented or failed to disclose in an application for insurance any fact required to be stated therein.

238. (1) Prohibition, grounds to terminate.—An insurer shall not decline to issue, terminate or refuse to renew a contract or refuse to provide or continue a coverage or endorsement, except on a ground filed with the Commissioner under this section.

(2) Filing of grounds.—An insurer shall file with the Commissioner the grounds on which the insurer intends to decline to issue, terminate or refuse to renew a contract or refuse to provide or continue a coverage or endorsement.

(3) Material to be furnished.—The grounds shall be filed in a form approved by the Commissioner and shall be filed together with such information, material and evidence as the Commissioner may specify.

(4) Effective date.—An insurer may use a ground filed under subsection (2) fifteen days after it is filed unless the Commissioner within that fifteen-day period notifies the insurer orally or otherwise that the insurer is prohibited from using the ground because the Commissioner is of the opinion that the ground,

- (a) is subjective;
- (b) is arbitrary;
- (c) bears little or no relationship to the risk to be borne by the insurer in respect of an insured; or
- (d) is contrary to public policy.

(5) Notice.—If the Commissioner notifies an insurer orally that the insurer is prohibited from using a ground, the Commissioner shall promptly mail a written notice to the insurer confirming that fact.

(6) Hearing.—If the Commissioner notifies an insurer that the insurer is prohibited from using a ground, the insurer may require the Commissioner to hold a hearing on the ground.

(7) Permission after hearing.—After the hearing, the Commissioner shall permit the insurer to use the ground if the Commissioner no longer holds the opinion referred to in subsection (4).

(8) Reconsideration.—The Commissioner may, at any time, order a hearing with respect to a ground that has been filed under this section and may prohibit the use of the ground or may prohibit the use of the ground in a manner specified by the Commissioner if he or she is of the opinion that the ground or the manner in which it is applied,

- (a) is subjective;
- (b) is arbitrary;
- (c) bears little or no relationship to the risk to be borne by the insurer in respect of an insured; or
- (d) is contrary to public policy.

(9) **Information.**—The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary for the purpose of this section. S.O. 1993, c. 10, s. 19.

Motor Vehicle Liability Policies

239. (1) Coverage of owner's policy, specific automobile.—Subject to section 240, every contract evidenced by an owner's policy insures the person named therein and every other person who with the named person's consent drives, or is an occupant of, an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

- (a) arising from the ownership or directly or indirectly from the use or operation of any such automobile; and
- (b) resulting from bodily injury to or the death of any person and damage to property.

(2) **Saving, statutory accident benefits.**—A lack of consent does not invalidate such statutory accident benefits as are set out in the *Statutory Accident Benefits Schedule*.

(3) **Coverage of owner's policy, other automobiles.**—Where the contract evidenced by an owner's policy also provides insurance against liability in respect of an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to such persons as are specified in the contract.

(4) **Death of person named in owner's policy.**—Where the insured named in an owner's policy dies, the following persons shall be deemed to be the insured under the policy:

- 1. The spouse of the deceased insured.
- 2. In respect of the described automobile, a newly acquired automobile that was acquired by the deceased insured prior to his death and a temporary substitute automobile, all as defined by the policy,
 - i. any person having proper temporary custody thereof until grant of probate or administration to the personal representative of the deceased insured,
 - ii. the personal representative of the deceased insured.

240. Insurer not liable re: excluded driver.—If a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or under this Act or the regulations for any loss or damage that occurs while the excluded driver is driving an automobile insured under the contract, except as provided in the *Statutory Accident Benefits Schedule*.

241. Coverage of non-owner's policy.—Every contract evidenced by a non-owner's policy insures the person named therein and such other person, if any, as is specified

in the policy against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

- (a) arising directly or indirectly from the use or operation of an automobile within the definition thereof in the policy, other than an automobile owned by him, her or it or registered in his, her or its name; and
- (b) resulting from bodily injury to or the death of any person, and damage to property.

242. Persons deemed not owners.—For the purposes of this Part, a person shall not be deemed to be the owner of an automobile for the reason only that the person has a lien on the automobile or has legal title to the automobile as security.

243. Territorial limits.—Insurance under sections 239 and 241 applies to the ownership, use or operation of the insured automobile in Canada, the United States of America and any other jurisdiction designated in the *Statutory Accident Benefits Schedule*, and on a vessel plying between ports of Canada, the United States of America or a designated jurisdiction. S.O. 1996, c. 21, s. 20.

(2) **Same.**—Statutory accident benefits provided under section 268 apply to the use or operation of any automobile in Canada, the United States of America and any other jurisdiction designated in the *Statutory Accident Benefits Schedule*, and on a vessel plying between ports of Canada, the United States of America or a designated jurisdiction. S.O. 1996, c. 21, s. 20.

244. Rights of unnamed insured.—Any person insured by but not named in a contract to which section 239 or 241 applies may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

245. Additional agreements.—Every contract evidenced by a motor vehicle liability policy shall provide that, where a person insured by the contract is involved in an accident resulting from the ownership, or directly or indirectly from the use or operation of an automobile in respect of which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall,

- (a) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant and effect such settlement of any resulting claims as are deemed expedient by the insurer;
- (b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action that is at any time brought against the insured on account of loss or damage to persons or property;
- (c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability; and
- (d) where the injury is to a person, reimburse the insured for outlay for such medical aid as is immediately necessary at the time.

246. Liability from ownership.—Liability arising from contamination of property carried in an automobile shall not be deemed to be liability arising from the ownership, use or operation of such automobile.

247. Idem.—The insurer may provide under a contract evidenced by a motor vehicle liability policy, in either or both of the following cases, that it shall not be liable,

- (a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles for any loss or damage sustained while engaged in the use or operation of or while working upon the automobile in the course of that business unless the person is the owner of the automobile or is his employee;
- (b) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by or in the care, custody or control of the insured.

248. Idem.—Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy that it shall not be liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while such automobile is at the site of the use or operation of that machinery or apparatus.

249. Excluded driver endorsement.—A named insured may stipulate by endorsement to a contract evidenced by a motor vehicle liability policy that any person named in the endorsement is an excluded driver under the contract.

250. (1) Liability from ownership.—The insurer may provide under a contract evidenced by a motor vehicle liability policy, in one or more of the following cases, that except as provided in the *Statutory Accident Benefits Schedule* it shall not be liable while,

- (a) the automobile is rented or leased to another person;
 - (b) the automobile is used to carry explosives or to carry radio-active material for research, education, development or industrial purposes or for purposes incidental thereto;
 - (c) the automobile is used as a taxi-cab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire;
 - (d) where the insured vehicle is an automobile, other than a trailer, it is used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer;
 - (e) where the insured vehicle is a trailer, it is towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.
- (2) **Definition.**—In clause (1)(b), “radio-active material” means
- (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor;
 - (b) radio-active waste material;

(c) unused enriched nuclear fuel rods; or

(d) any other radio-active material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.

(3) **Exception.**—Clause (1)(a) does not include the use by an employee of his or her automobile on the business of the employee's employer and for which the employee is paid.

(4) **Certain rules excepted.**—Clause (1)(c) does not include,

(a) the use by a person of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;

(b) the occasional and infrequent use by a person of the person's automobile for the carriage of another person who shares the cost of the trip;

(c) the use by a person of the person's automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse;

(d) the use by a person of the person's automobile for the carriage of a client or customer or a prospective client or customer; or

(e) the occasional and infrequent use by the insured of the insured's automobile for the transportation of children to or from school or school activities conducted within the educational program.

251. (1) Minimum liability under policy.—Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of at least \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.

(2) **Priorities.**—The contract shall be interpreted to mean that where, by reason of any one accident, liability results from bodily injury or death and from loss of or damage to property,

(a) claims against the insured arising out of bodily injury or death have priority to the extent of \$190,000 over claims arising out of loss of or damage to property; and

(b) claims against the insured arising out of loss of or damage to property have priority to the extent of \$10,000 over claims arising out of bodily injury or death.

(3) **Minimum limits where separate limits designated.**—The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least \$200,000, exclusive of interest and costs, against liability for loss of or damage to property.

(4) **Variation of limits.**—Nothing in this part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (3), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation

of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1) or (3).

252. (1) Stipulation in motor vehicle liability policy.—Every motor vehicle liability policy issued in Ontario shall provide that, in the case of liability arising out of the ownership or, directly or indirectly, out of the use or operation of the automobile in any province or territory of Canada, in a jurisdiction of the United States of America or in any other jurisdiction in the *Statutory Accident Benefits Schedule*,

- (a) the insurer is liable up to the minimum limits prescribed for that province, territory or jurisdiction if those limits are higher than the limits prescribed by the policy;
- (b) the insurer will not set up a defence to a claim that could not be set up if the policy were a motor vehicle liability policy issued in that province, territory or jurisdiction; and
- (c) the insured, by acceptance of the policy, constitutes and appoints the insurer as the insured's irrevocable attorney to appear and defend in any province or territory of Canada, any jurisdiction of the United States of America or any other jurisdiction designated in the *Statutory Accidents Benefits Schedule* in which an action is brought against the insured arising out of the ownership, use or operation of the automobile.

(2) **Power of attorney binding.**—A provision in a motor vehicle liability policy in accordance with clause (1)(c) is binding on the insured. S.O. 1996, c. 21, s. 21.

253. (1) Excess insurance.—Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by motor vehicle liability policy, whether the designated contract is a first loss insurance or an excess insurance.

(2) **Termination of excess insurance.**—Where the contract designated in the excess contract terminates or is terminated, the excess contract is also automatically terminated.

254. Agreement for partial payment of claim by insured.—Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy providing that the insured will reimburse the insurer in an agreed amount in respect of any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor.

255. (1) Definition.—In this section, “nuclear energy hazard” means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada).

(2) **Liability when nuclear energy contract also in force.**—Where an insured is covered, whether named therein or not, under a contract evidenced by a motor vehicle liability policy for loss or damage resulting from bodily injury to or the death of any

person or damage to property arising directly or indirectly out of a nuclear energy hazard and is also covered, whether named therein or not, against such loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

- (a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance, and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by section 251; and
- (b) the unnamed insured under the contract of nuclear energy liability insurance may, in respect of such loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named therein as the insured, and for that purpose the unnamed insured shall be deemed to be a party to the contract and to have given consideration therefor.

(3) **When contract deemed in force.**—For the purpose of this section, a contract of nuclear energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability thereunder have been exhausted.

256. (1) Advance payments and release by claimant.—Where an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or alleges himself to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or the person's personal representative of any claim that the person or the person's personal representative or any person claiming through or under him or by virtue of Part V of the *Family Law Act* may have against the insured and the insurer.

(2) **Idem.**—Nothing in this section precludes the insurer making the payment from demanding, as a condition precedent to such payment, a release from the person or the person's personal representative or any other person to the extent of such payment.

(3) **Payment to be taken into account.**—Where the person commences an action, the court shall adjudicate upon the matter first without reference to the payment but in giving judgment the payment shall be taken into account and the person shall only be entitled to judgment for the net amount, if any.

(4) **Intention.**—The intention of this section is to permit payments to a claimant without prejudice to the defendant or his insurer, either as an admission of liability or otherwise, and the fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry thereof.

257. (1) Defence where more than one contract.—Where a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under clause 245(b) between an insurer and the insured or between the insurers as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract, the insured or any insurer may apply

to the Ontario Court (General Division), and the court shall give such directions as may appear proper with respect to the performance of the obligation.

(2) **Hearing.**—On an application under subsection (1), the only parties entitled to notice thereof and to be heard thereon are the insured and the insured's insurers, and no material or evidence used or taken upon such an application is admissible upon the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

(3) **Order.**—An order under subsection (1) does not affect the rights and obligations of the insurers in respect of payment of any indemnity under their respective policies.

(4) **Contribution.**—Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in section 245 in accordance with their respective liabilities for damages awarded against the insured.

258. (1) Application of insurance money under motor vehicle liability policy.—Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, notwithstanding that such person is not a party to the contract, may, upon recovering a judgment therefor in any province or territory of Canada against the insured, have the insurance money payable under the contract applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) **Limitation.**—No action shall be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals if any.

(3) **Other creditors excluded.**—A creditor of the insured is not entitled to share in the insurance money payable under any contract unless his claim is one for which indemnity is provided for by that contract.

(4) **Insurer absolutely liable.**—The right of a person who is entitled under subsection (1) to have insurance money applied upon his judgment or claim is not prejudiced by,

- (a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest therein or of the proceeds thereof, made by the insured after the happening of the event giving rise to a claim under the contract;
- (b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract; or
- (c) any contravention of the *Criminal Code* (Canada) or a statute of any province or territory of Canada or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

and nothing mentioned in clause (a), (b) or (c) is available to the insurer as a defence in an action brought under subsection(1).

(5) **Section applicable to purported policy.**—It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor vehicle liability policy, and this section applies with necessary modifications to the instrument.

(6) **Contribution among insurers.**—The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and contribute according to their respective liabilities, whether the contribution is rateably or by way of first loss or excess insurance, as the case may be, and the insured shall on demand furnish the insurer with particulars of all other insurance covering the subject-matter of the contract.

(7) **Payment into Court.**—Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1), and the insurer admits liability to pay the insurance money under the contract and the insurer considers that,

- (a) there are or may be other claimants; or
- (b) there is no person capable of giving and authorized to give a valid discharge for payment who is willing to do so,

the insurer may apply to the court *ex parte* for an order for payment of the money into court, and the court may, upon such notice, if any as it thinks necessary, make an order accordingly.

(8) **Effect of order.**—The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into court under subsection (7), and the insurance money shall be dealt with as the court may order upon application of any person interested therein.

(9) **Defence to excess limits claim relating to s. 250 coverage.**—Notwithstanding anything contained therein to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 250, but the insurer is not liable to a claimant with respect to such coverage in excess of the limits mentioned in section 251.

(10) **Defence where coverage under ss. 247, 248.**—Where one or more contracts provide for coverage of a type mentioned in section 247 or 248, except as provided in subsection (12), the insurer may,

- (a) with respect to that type of coverage; and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

(11) **Defence where excess limits.**—Where one or more contracts provide for coverage in excess of limits mentioned in section 251, except as provided in subsection (12), the insurer may,

- (a) with respect to the coverage in excess of those limits; and
- (b) as against a claimant,

avail itself of any defence it is entitled to set up against the insured, notwithstanding subsection (4).

(12) **Defence where vehicle used in business of carrying passengers.**—Where a contract provides coverage of the type mentioned in clause 216(a) of *The Insurance Act*, being chapter 224 of the Revised Statutes of Ontario, 1970, in respect of an automobile operated in the business of carrying passengers for compensation or hire and insured for that purpose, the insurer may,

- (a) with respect to that type of coverage; and
- (b) as against a claimant,

only avail itself of a defence that it is entitled to set up against the insured in respect of that part of the coverage, if any, that exceeds,

- (c) the limits mentioned in section 251; or
- (d) the minimum limits required for that type of coverage by or under any other Act,

whichever is the greater.

(13) **Insured's liability to reimburse insurer.**—The insured shall reimburse the insurer upon demand in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

(14) **Insurer may be made third party.**—Where an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it shall, upon application to the court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

(15) **Rights of insurer.**—Upon being made a third party, the insurer may,

- (a) contest the liability of the insured to any party claiming against the insured;
- (b) contest the amount of any claim made against the insured;
- (c) deliver any pleadings in respect of the claim of any party claiming against the insured;
- (d) have production and discovery from any party adverse in interest; and
- (e) examine and cross-examine witnesses at the trial,

to the same extent as if it were a defendant in the action.

(16) **Idem.**—An insurer may avail itself of subsection (15) notwithstanding that another insurer is defending in the name and on behalf of the insured an action to which its insured is a party.

258.1 (1) Notice of accident.—If an automobile insured under a contract is involved in an incident that is required to be reported to the police under the *Highway Traffic Act* or in respect of which the insured intends to make a claim under the contract, the insured shall give the insurer written notice of the incident, with all available particulars.

(2) **Same.**—Subject to subsection (3), the notice required by subsection (1) shall be given to the insurer within seven days of the incident.

(3) **Same.**—If the insured is unable because of incapacity to comply with subsection (1) within seven days of the incident, the insured shall comply as soon as possible thereafter. S.O. 1996, c. 21, s. 22.

258.2 Application of ss. 258.3 to 258.6.—Sections 258.3 to 258.6 apply only in respect of a claim for loss or damage from bodily injury or death arising from the use or operation, after section 29 of the *Automobile Insurance Rate Stability Act, 1996* comes into force, of an automobile in Canada, the United States of America or a jurisdiction designated in the *Statutory Accident Benefits Schedule*. S.O. 1996, c. 21, s. 22.

258.3 (1) Notice and disclosure before action.—An action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile shall not be commenced unless,

- (a) the plaintiff has applied for statutory accident benefits;
- (b) the plaintiff served written notice of the intention to commence the action on the defendant within 120 days after the incident or within such longer period as a court in which the action may be commenced may authorize, on motion made before or after the expiry of the 120-day period;
- (c) the plaintiff provided the defendant with the information prescribed by the regulations within the time period prescribed by the regulations;
- (d) the plaintiff has, at the defendant's expense, undergone examinations by one or more persons selected by the defendant who are members of Colleges as defined in the *Regulated Health Professions Act, 1991*, if the defendant requests the examinations within 90 days after receiving the notice under clause (b);
- (e) the plaintiff has provided the defendant with a statutory declaration describing the circumstances surrounding the incident and the nature of the claim being made, if the statutory declaration is requested by the defendant; and
- (f) the plaintiff has provided the defendant with evidence of the plaintiff's identity, if evidence of the plaintiff's identity is requested by the defendant.

(2) **Notice to insurer.**—An insured who receives a notice under clause (1)(b) shall give a copy of the notice to the insurer within seven days of receiving the notice.

(3) **Same.**—If the insured is unable because of incapacity to comply with subsection (2) within seven days of receiving the notice, the insured shall comply as soon as possible thereafter.

(4) **Contents of notice.**—The notice under clause (1)(b) shall inform the person to whom it is given of the obligation under subsection (2).

(5) **Limits on examination.**—An examination under clause (1)(d) shall not be unnecessarily repetitious and shall not involve a procedure that is unreasonable or dangerous.

(6) **Examiner may ask questions.**—A person examined under clause (1)(d) shall answer the questions of the examiner relevant to the examination.

(7) **Copy of report.**—If a person who performs an examination under clause (1)(d) gives a report on the examination to the defendant, the defendant shall ensure that the plaintiff receives a copy of the report within 60 days after the defendant receives the report.

(8) **Prejudgment interest.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, no prejudgment interest shall be awarded under section 128 of the *Courts of Justice Act* for any period of time before the plaintiff served the notice under clause (1)(b).

(9) **Failure to comply.**—Despite subsection (1), a person may commence an action without complying with subsection (1), but the court shall consider the non-compliance in awarding costs.

(10) **Service.**—Section 33 applies, with necessary modifications, to the service of a notice under clause (1)(b). S.O. 1996, c. 21, s. 22.

258.4 Duty to disclose limits.—An insurer that receives a notice under clause 258.3(1)(b) shall promptly inform the plaintiff whether there is a motor vehicle liability policy issued by the insurer to the defendant and, if so,

- (a) the liability limits under the policy; and
- (b) whether the insurer will respond under the policy to the claim. S.O. 1996, c. 21, s. 22.

258.5 (1) Duty of insurer re settlement of claim.—An insurer that is defending an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile on behalf of an insured or that receives a notice under clause 258.3(1)(b) from an insured shall attempt to settle the claim as expeditiously as possible.

(2) **Advance payment.**—If the insurer admits liability in respect of all or part of a claim for income loss, the insurer shall make payments to the person making the claim pending the determination of the amount owing.

(3) **Amount of payments.**—The amount of the payments under subsection (2) shall be based on the insurer's estimate of the amount owing in respect of the claim for income

loss, having regard to any information provided to the insurer by the person making the claim.

(4) **Application of subss. 256(1-3).**—Subsections 256(1), (2) and (3) apply, with necessary modifications, to advance payments made under this section.

(5) **Failure to comply.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, an insurer's failure to comply with this section shall be considered by the court in awarded costs. S.O. 1996, c. 21, s. 22.

258.6 (1) Mediation.—A person making a claim for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile and an insurer that is defending an action in respect of the claim on behalf of an insured or that receives a notice under clause 258.3(1)(b) in respect of the claim shall, on the request of either of them, participate in a mediation of the claim in accordance with the procedures prescribed by the regulations.

(2) **Failure to comply.**—In an action in respect of the claim, a person's failure to comply with this section shall be considered by the court in awarding costs. S.O. 1996, c. 21, s. 22.

259. (1) Insured to give notice of action.—Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice thereof in writing to the insurer within five days after service of every notice or process in the action.

(2) **Insured to disclose insurance.**—Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within ten days after written demand therefor.

260. Stipulations in physical damage cover.—Subject to subsection 227(1), the insurer may provide in a contract such exclusions and limitations, in respect of loss of or damage to or the loss of use of the automobile, as it considers necessary.

261. (1) Partial payment of loss clause.—A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use thereof may contain a clause to the effect that, in the event of loss, the insurer shall pay only,

(a) an agreed portion of any loss that may be sustained; or

(b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

(1.1) **Mandatory deductible.**—Despite subsection (1), in the circumstances prescribed by the regulations, a contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use thereof shall contain a clause to the effect that, in the event of loss, the insurer shall pay only the amount of the loss after deduction of a sum specified in the policy not exceeding the amount of the insurance.

(2) **Stamping required.**—Where a clause is inserted in accordance with subsection (1) or (1.1), there shall be printed or stamped upon the face of the policy in conspicuous type the words: “This policy contains a partial payment of loss clause” or the French equivalent. S.O. 1996, c. 21, s. 23.

262. (1) Claims to be adjusted with insured.—Where a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

(2) **Exception.**—Despite subsection (1), if notice of a claim is given or proof of loss is made by a person having an interest indicated in the contract, and no notice is given and no proof of loss is made by the insured within sixty days after the day the notice or proof is required under the contract, the insurer may adjust and pay the claim to the other person having an interest indicated in the contract. S.O. 1993, c. 10, s. 20.

Direct Compensation — Property Damage

263. (1) Application.—This section applies if,

- (a) an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Ontario of one or more other automobiles;
- (b) the automobile that suffers the damage or in respect of which the contents suffer damage is insured under a contract evidenced by a motor vehicle liability policy issued by an insurer that is licensed to undertake automobile insurance in Ontario or that has filed with the Commission, in the form provided by the Commission, an undertaking to be bound by this section; and
- (c) at least one other automobile involved in the accident is insured under a contract evidenced by a motor vehicle liability policy issued by an insurer that is licensed to undertake automobile insurance in Ontario or that has filed with the Commission, in the form provided by the Commission, an undertaking to be bound by this section.

(2) **Damage recovery from insured’s insurer.**—If this section applies, an insured is entitled to recover for the damages to the insured’s automobile and its contents and for loss of use from the insured’s insurer under the coverage described in subsection 239(1) as though the insured were a third party.

(3) **Idem.**—Recovery under subsection (2) shall be based on the degree of fault of the insurer’s insured as determined under the fault determination rules.

(4) **Dispute resolution.**—An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law.

(5) **Restrictions on other recovery.**—If this section applies,

- (a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use;
- (a.1) an insured has no right of action against a person under an agreement, other than a contract of automobile insurance, in respect of damages to the insured's automobile or its contents or loss of use, except to the extent that the person is at fault or negligent in respect of those damages or that loss.
- (b) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to its insured under this section.

(5.1) **Agreement for partial payment.**—Nothing in this Part precludes an insurer, in a contract belonging to a class prescribed by the regulations, from agreeing with an insured that, in the event that a claim is made by the insured under this section, the insurer shall pay only,

- (a) an agreed portion of the amount that the insured would otherwise be entitled to recover; or
- (b) the amount that the insured would otherwise be entitled to recover, reduced by a sum specified in the agreement.

(5.2) **Application of subs. (5.1).**—Subsection (5.1) does not apply unless, before the insurer enters into the contract referred to in that subsection, the insurer offers to enter into another contract with the prospective insured that does not contain the agreement referred to in that subsection but is identical to the contract referred to in subsection (5.1) in all other respects except for the amount of the premium.

(5.2.1) **Mandatory deductible.**—In the circumstances prescribed by the regulations, a contract belonging to a class prescribed for the purpose of subsection (5.1) shall provide that, in the event that a claim is made by the insured under this section, the insurer shall pay only the amount that the insured would otherwise be entitled to recover, reduced by a sum specified in the contract.

(5.2.2) **Application of subs. (5.2).**—Subsection (5.2) does not apply to a contract that contains a provision required by subsection (5.2.1).

(5.3) **Stamping required.**—If a contract contains an agreement referred to in subsection (5.1), or a provision required by subsection (5.2.1) the policy shall have printed or stamped on its face in conspicuous type the words “This policy contains a partial payment of recovery clause for property damage” in English or “La présente police comporte une clause de recouvrement partiel en cas de dommages matériels” in French, as may be appropriate.

(6) **Other coverages not affected.**—This section does not affect an insured's right to recover in respect of any physical damage coverage in respect of the insured automobile.

(7) **Non-application.**—This section does not apply to damages to those contents of an automobile that are being carried for reward.

(8) **Idem.**—This section does not apply if the damage occurred before the 22nd day of June, 1990.

(9) **Idem.**—This section does not apply if both automobiles are owned by the same person.

(10) **Idem.**—This section does not apply to damage to an automobile owned by the insured or to its contents if the damage is caused by the insured while driving another automobile. S.O. 1993, c. 10, s. 21(1), (2); S.O. 1996, c. 21, s. 24.

264. [Repealed S.O. 1996, c. 21, s. 25.]

Limited Accident Insurances

265. (1) Uninsured automobile coverage.—Every contract evidenced by a motor vehicle liability policy shall provide for payment of all sums that,

- (a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
- (b) any person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and
- (c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile,

subject to the terms, conditions, provisions, exclusions and limits as are prescribed by the regulations.

(2) **Definitions.**—For the purposes of this section,

“insured automobile”.—“insured automobile” means the automobile as defined or described under the contract;

“person insured under the contract”.—“person insured under the contract” means,

- (a) in respect of a claim for damage to the insured automobile, the owner of the automobile,
- (b) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents,
- (c) in respect of a claim for bodily injuries or death,
 - (i) any person while an occupant of the insured automobile,

- (ii) the insured and his or her spouse and any dependent relative of either,
 - A. while an occupant of an uninsured automobile, or
 - B. while not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,
- (iii) if the insured is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured for whose regular use the insured automobile is furnished, and his or her spouse and any dependent relative of the person or the spouse,
 - A. while an occupant of an uninsured automobile, or
 - B. while not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile, where such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;

“unidentified automobile”.—“unidentified automobile” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;

“uninsured automobile”.—“uninsured automobile” means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or his or her spouse.

(3) **Exclusion from coverage**.—Despite the definition of “person insured under the contract” in subsection (2), a person who sustains loss or damage while the insured automobile is being used or operated by an excluded driver shall be deemed not to be a person insured under the contract in which the excluded driver is named, except as provided in the *Statutory Accident Benefits Schedule*.

(4) **Idem**.—Where a dependent relative referred to in clause (c) of the definition of “person insured under the contract” in subsection (2),

- (a) is the owner of an automobile insured under a contract; or
- (b) sustains bodily injuries or dies as the result of accident while the occupant of his own uninsured automobile,

such relative shall be deemed not to be a dependent relative for the purposes of this section.

(5) **Regulations**.—The Lieutenant Governor in Council may make regulations,

- (a) prescribing, amending or altering the terms, conditions, provisions, exclusions and limits with respect to payments under subsection (1);
- (b) deeming any term, condition, provision, exclusion or limit as prescribed, amended or altered by a regulation made under clause (a) to be included in any

motor vehicle liability policy made or renewed on or after the effective date of the regulation and in any motor vehicle liability policy that is subsisting on the effective date of the regulation; and

- (c) requiring that terms, conditions, provisions, exclusions and limits, as prescribed, amended or altered by a regulation made under clause (a), be attached to or included in every motor vehicle liability policy as a schedule in or to the policy.

(6) **Subrogation.**—Where an amount is paid under subsection (1), the insurer is subrogated to the rights of the person to whom such amount is paid and the insurer may maintain an action in its name or in the name of such person against any other person or persons responsible for the use or operation of the uninsured or unidentified automobile.

(7) **Restriction on recovery.**—No person has a right of action against any other person in respect of damage to an uninsured automobile or its contents arising directly from the use or operation of an automobile if at the time of the damage the uninsured automobile was required by any Act to be insured under a contract evidenced by a motor vehicle liability policy.

(8) **Release.**—A release under section 274 does not enure to the benefit of any person against whom the insurer may subrogate under subsection (6).

(9) **Application.**—This section applies to all contracts evidenced by motor vehicle liability policies made or renewed on or after the 1st day of March, 1980, and all contracts evidenced by motor vehicle liability policies that were subsisting on the 1st day of March, 1980, shall be deemed to provide for the payments referred to in subsection (1) in respect of an accident arising out of the use or operation of an automobile occurring on or after that date.

266. (1) No-fault principle established.—In respect of loss or damage arising directly or indirectly from the use or operation, after the 21st day of June, 1990, of an automobile and despite any other Act, none of the owner of an automobile, the occupants of an automobile or any person present at the incident are liable in an action in Ontario for loss or damage from bodily injury arising from such use or operation in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* involving the automobile unless, as a result of such use or operation, the injured person has died or has sustained,

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(2) **Idem.**—Subsection (1) does not relieve any person from liability other than the owner of the automobile, occupants of the automobile and persons present at the incident.

(3) **Judicial determination.**—In an action for loss or damage from bodily injury arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before or at trial, determine if the injured person has, as a result of the accident, died or has sustained,

(a) permanent serious disfigurement; or

(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(4) **Idem.**—Even though a defence motion under subsection (3) is denied, the defendant may, at trial, in the absence of the jury, and following the hearing of evidence, raise the defence provided in subsection (1).

(5) **Joint and several liability, joint tortfeasors.**—In a proceeding involving a plaintiff who cannot recover against the owner of an automobile, the occupant of an automobile or a person present at the incident because of the operation of subsection (1), a defendant is not liable for damages caused by any person who is excluded from liability because of the operation of subsection (1) and is not liable to contribute or indemnify in respect of such damages.

(6) **Idem.**—For the purposes of subsection (5), the proportion of liability of all persons involved in the incident from which the proceeding arose shall be determined as though all persons wholly or partly responsible for the loss or damage were parties to the proceeding even though any such person is not actually a party.

(7) **Definition.**—For the purposes of this section, “owner” includes an operator as defined in subsection 16(1) of the *Highway Traffic Act*.

(8) **Application.**—This section does not apply to an action for loss or damage arising from the use or operation, after December 31, 1993, of an automobile. S.O. 1993, c. 10, s. 23; S.O. 1996, c. 21, s. 26.

267. (1) Collateral source rule not to apply.—The damages awarded to a person in a proceeding for loss or damage arising directly or indirectly from the use or operation of an automobile shall be reduced by,

(a) all payments that the person has received or that were or are available for statutory accident benefits and by the present value of any statutory accident benefits to which the person is entitled;

(b) all payments that the person has received under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law and by the present value of such payments to which the person is entitled;

(c) all payments that the person has received or that were or are available for loss of income under the laws of any jurisdiction or under an income continuation benefit plan and by the present value of any such payments to which the person is entitled; and

(d) all payments that the person has received under a sick leave plan arising by reason of the person’s occupation or employment.

(2) **Exception.**—Payments or benefits received or that were, are or may become available to a person under the *Workers’ Compensation Act* shall not be applied under subsection (1) to reduce the damages awarded.

(3) **Idem.**—A reduction made under subsection (1) does not apply for the purpose of determining a person's entitlement to compensation under subsection 10(2) of the *Workers' Compensation Act*.

(4) **Limitation on subrogation.**—A person who has made a payment or who has a liability to pay a benefit described in clause (1)(a), (b), (c) or (d) is not subrogated to a right of recovery of the insured against another person in respect of that payment or benefit.

(5) **Idem.**—The Workers' Compensation Board is not subrogated to a right of recovery of the insured against another person in respect of a payment or benefit paid by the Workers' Compensation Board to the insured or in respect of a liability to make such payment or benefit.

(6) **Application.**—This section applies to damages awarded for loss or damage arising directly or indirectly from the use or operation, after the 23rd day of October, 1989 and before January 1, 1994 of an automobile. S.O. 1993, c. 10, s. 24; S.O. 1996, c. 21, s. 27.

267.1 (1) Protection from liability.—Despite any other Act and subject to subsections (2) and (6), the owner of an automobile, the occupants of an automobile and any person present at the incident are not liable in a proceeding in Ontario for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of the automobile in Canada, the United States of America or any other country designated in the *Statutory Accident Benefits Schedule*.

(2) **Non-pecuniary loss.**—Subsection (1) does not relieve a person from liability for damages for non-pecuniary loss, including damages for non-pecuniary loss under clause 61(2)(e) of the *Family Law Act*, if as a result of the use or operation of the automobile the injured person has died or has sustained,

- (a) serious disfigurement; or
- (b) serious impairment of an important physical, mental or psychological function.

(3) **Motion to determine if non-pecuniary loss threshold met.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before trial with the consent of the parties or in accordance with an order of a judge who conducts a pre-trial conference, determine if, as a result of the use or operation of the automobile, the injured person has died or has sustained,

- (a) serious disfigurement; or
- (b) serious impairment of an important physical, mental or psychological function.

(4) **Determination binding.**—The determination of a judge on a motion under subsection (3) is binding on the parties at the trial.

(5) **Determination at trial.**—If no motion is made under subsection (3), the trial judge shall determine if, as a result of the use or operation of the automobile, the injured person has died or has sustained,

(a) serious disfigurement; or

(b) serious impairment of an important physical, mental or psychological function.

(6) **Liability of other persons.**—Subsection (1) does not relieve any person from liability other than the owner of the automobile, the occupants of the automobile and the person present at the incident.

(7) **Joint and several liability, pecuniary loss.**—If, in the absence of subsection (1), the owner of an automobile, an occupant of an automobile or a person present at the incident would have been jointly and severally liable for damages for pecuniary loss with one or more other persons who are not relieved of liability by subsection (1), the other persons are liable for those damages only to the extent that they are at fault or negligent in respect of those damages.

(8) **Non-pecuniary loss, amount of damages.**—Subject to subsections (2) to (5), in a proceeding for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the court shall determine the amount of damages for non-pecuniary loss to be awarded against the owner of the automobile, an occupant of the automobile or a person present at the incident in accordance with the following rules:

1. The court shall first determine the amount of damages for non-pecuniary loss for which the owner of the automobile, the occupant of the automobile or the person present at the incident would be liable without regard to this Part.
2. The determination under paragraph 1 shall be made in the same manner as a determination of the amount of damages for non-pecuniary loss in a proceeding to which this section does not apply and, in particular, without regard to,
 - i. the statutory accident benefits provided for under subsection 268(1),
 - ii. the provisions of this section that protect the owner of the automobile, the occupants of the automobile and the persons present at the incident from liability for damages for pecuniary loss, and
 - iii. the provisions of paragraph 3.
3. The amount of damages for non-pecuniary loss to be awarded against the owner of the automobile, the occupant of the automobile or the person present at the incident shall be determined by reducing the amount determined under paragraph 1 by,
 - i. in the case of damages for non-pecuniary loss other than damages for non-pecuniary loss under clause 61(2)(e) of the *Family Law Act*,
 - A. \$10,000, if the award of damages is made in 1993 or 1994, or
 - B. the non-pecuniary loss deductible published under clause 267.2(1)(a) for the year in which the court makes the award of damages, if the award of damages is made in a year after 1994, and

ii. in the case of damages for non-pecuniary loss under clause 61(2)(e) of the *Family Law Act*,

A. \$5,000, if the award of damages is made in 1993 or 1994, or

B. the *Family Law Act* deductible published under clause 267.2(1)(b) for the year in which the court makes the award of damages, if the award of damages is made in a year after 1994.

(9) **Same.**—Subsection (8) applies in respect of each person who is entitled to damage for non-pecuniary loss.

(10) **Non-pecuniary loss, other tortfeasors.**—If, in a proceeding for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, one or more persons other than the owner of the automobile, the occupants of the automobile and the persons present at the incident are found to be liable for damages for non-pecuniary loss,

(a) the other persons,

(i) are jointly and severally liable with the owner, occupants and persons present at the incident for the damages for which the owner, occupants and persons present at the incident are liable under subsection (8), and

(ii) are solely liable for any amount by which the amount mentioned in sub-clause (i) is less than the amount that the other persons would have been liable to make contribution and indemnify the owner, occupants and persons present at the incident in respect of non-pecuniary loss in the absence of this section;

(b) the other persons are liable to make contribution and indemnify the owner, occupants and persons present at the incident in respect of non-pecuniary loss to the same extent as if this section did not apply, up to the amount for which the owner, occupants and persons present at the incident are liable under subsection (8); and

(c) the owner, occupants and persons present at the incident are liable to make contribution and indemnify the other persons for the amount that the owner, occupants and persons present at the incident are liable under subsection (8), reduced by the amount that the other persons are liable to make contribution and indemnify the owner, occupants and persons present at the incident under clause (b).

(11) **Determination of liability.**—For the purposes of subsections (7) to (10), the liability of all persons involved in the incident from which the proceeding arose shall be determined as though all persons wholly or partly responsible for the damages were parties to the proceeding even though any of those persons is not actually a party.

(12) **Costs.**—In a proceeding for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the determination of a

party's entitlement to costs shall be made without regard to the effect of paragraph 3 of subsection (8) on the amount of damages, if any, awarded for non-pecuniary loss.

(13) [Repealed S.O. 1996, c. 21, s. 28(1).]

(14) **Definition.**—For the purposes of this section, “owner” includes an operator as defined in subsection 16(1) of the *Highway Traffic Act*.

(15) **Application.**—This section applies only to a proceeding for loss or damage arising from the use or operation, after December 31, 1993 and before section 29 of the *Automobile Insurance Rate Stability Act, 1996* comes into force, of an automobile. S.O. 1993, c. 10, s. 25; S.O. 1996, c. 21, s. 28.

267.2. (1) Publication of deductible amounts.—Before the 1st day of January in each year after 1994, the Minister shall determine in accordance with this section and publish in the *The Ontario Gazette*,

- (a) the non-pecuniary loss deductible to be used under subparagraph i of paragraph 3 of subsection 267.1(8) in respect of awards of damages made in the year that begins on the 1st day of January; and
- (b) the *Family Law Act* deductible to be used under subparagraph ii of paragraph 3 of subsection 267.1(8) in respect of awards of damages made in the year that begins on the 1st day of January.

(2) **Rules for determination.**—The following rules apply to the determination of the non-pecuniary loss deductible and the *Family Law Act* deductible:

1. The non-pecuniary loss deductible for 1993 and 1994 is \$10,000.
2. The *Family Law Act* deductible for 1993 and 1994 is \$5,000.
3. The non-pecuniary loss deductible and the *Family Law Act* deductible for a year after 1994 shall be determined by adjusting the deductible for the previous year by the percentage change in the Consumer Price Index for Canada (All Items), as published by Statistics Canada under the authority of the *Statistics Act* (Canada), for the period from September in the year immediately preceding the previous year to September of the previous year.
4. Despite paragraph 3, if the Consumer Price Index information required by paragraph 3 to determine the deductibles for a year is not available by the 1st day of November in the previous year, or if in the Minister's opinion the information published by Statistics Canada does not provide a reasonable reflection of changes in consumer prices, the Minister may determine the deductibles in a manner that the Minister considers will provide a reasonable reflection of changes in consumer prices. S.O. 1993, c. 10, s. 25.

*Court Proceedings for Accidents After
the Automobile Insurance Rate Stability
Act, 1996*

267.3 Definitions.—In sections 267.4 to 267.11,

“owner”.—“owner” includes an operator as defined in subsection 16(1) of the *Highway Traffic Act*; (“propriétaire”)

“protected defendant”.—“protected defendant” means a person who is protected from liability by subsections 267.5(1), (3) and (5). (“défendeur exclu”) S.O. 1996, c. 21, s. 29.

267.4 Application of ss. 267.5 to 267.11.—Sections 267.5 to 267.11 apply only to proceedings for loss or damage from bodily injury or death arising from the use or operation, after section 29 of the *Automobile Insurance Rate Stability Act, 1996* comes into force, of an automobile in Canada, the United States of America or a jurisdiction designated in the *Statutory Accident Benefits Schedule*. S.O. 1996, c. 21, s. 29.

267.5 (1) Protection from liability; income loss and loss of earning capacity.—Despite any other Act the subject to subsection (6), the owner of an automobile, the occupants of an automobile and any person present at the incident are not liable in an action in Ontario for the following damages for income loss and loss of earning capacity from bodily injury or death arising directly or indirectly from the use or operation of the automobile:

1. Damages for income loss suffered in the seven days after the incident.
2. Damages for income loss suffered more than seven days after the incident and before the trial of the action in excess of 80 per cent of the net income loss, as determined in accordance with the regulations, suffered during that period.
3. Damages for loss of earning capacity suffered after the incident and before the trial of the action in excess of 80 per cent of the net loss of earning capacity, as determined in accordance with the regulations, suffered during that period.

(2) Application.—Subsection (1) applies to all actions, including actions under subsection 61(1) of the *Family Law Act*.

(3) Protection from liability; health care expenses.—Despite any other Act and subject to subsections (4) and (6), the owner of an automobile, the occupants of an automobile and any person present at the incident are not liable in an action in Ontario for damages for expenses that have been incurred or will be incurred for health care resulting from bodily injury arising directly or indirectly from the use or operation of the automobile.

(4) Exception for catastrophic impairment.—Subsection (3) does not apply if the injured person has sustained a catastrophic impairment, as defined in the regulations, arising directly or indirectly from the use or operation of the automobile.

(5) Protection from liability; non-pecuniary loss.—Despite any other Act and subject to subsection (6), the owner of an automobile, the occupants of an automobile and any person present at the incident are not liable in an action in Ontario for damages for non-pecuniary loss, including damages for non-pecuniary loss under clause 61(2)(e) of the *Family Law Act*, from bodily injury or death arising directly or indirectly from the use or operation of the automobile, unless as a result of the use or operation of the automobile the injured person has died or has sustained,

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important physical, mental or psychological function.

(6) **Application of subss. (1), (3) and (5).**—Subsections (1), (3) and (5) do not protect a person from liability if the person is defended in the action by an insurer that is not licensed to undertake automobile insurance in Ontario unless the insurer has filed an undertaking under section 226.1.

(7) **Amount of damages for non-pecuniary loss.**—Subsection to subsections (5), (12), (13) and (15), in an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the court shall determine the amount of damages for non-pecuniary loss to be awarded against a protected defendant in accordance with the following rules:

1. The court shall first determine the amount of damages for non-pecuniary loss for which the protected defendant would be liable without regard to this Part.
2. The determination under paragraph 1 shall be made in the same manner as a determination of the amount of damages for non-pecuniary loss in an action to which this section does not apply and, in particular, without regard to,
 - i. the statutory accident benefits provided for under subsection 268(1),
 - ii. the provisions of this section that protect protected defendants from liability for damages for pecuniary loss, and
 - iii. the provisions of paragraph 3.
3. The amount of damages for non-pecuniary loss to be awarded against the protected defendant shall be determined by reducing the amount determined under paragraph 1 by,
 - i. in the case of damages for non-pecuniary loss other than damages for non-pecuniary loss under clause 61(2)(e) of the *Family Law Act*, the greater of,
 - A. \$15,000, and
 - B. the amount prescribed by the regulations, and
 - ii in the case of damages for non-pecuniary loss under clause 61(2)(e) of the *Family Law Act*, the greater of,
 - A. \$7,500, and
 - B. the amount prescribed by the regulations.
4. If fault or negligence on the part of the person entitled to damages for non-pecuniary loss contributed to those damages, the award for damages shall be reduced under paragraph 3 before the damages are apportioned under section 3 of the *Negligence Act*.

(8) **Same.**—Subsection (7) applies in respect of each person who is entitled to damages for non-pecuniary loss.

(9) **Costs.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the determination of a party's entitlement to costs shall be made without regard to the effect of paragraph 3 of subsection (7) on the amount of damages, if any, awarded for non-pecuniary loss.

(10) **Liability of other persons.**—Subsections (1), (3) and (5) do not relieve any person from liability other than a protected defendant.

(11) **Motion to determine if threshold met; health care expenses.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before trial with the consent of the parties or in accordance with an order of a judge who conducts a pre-trial conference, determine for the purpose of subsection (4) whether the injured person has sustained a catastrophic impairment arising directly or indirectly from the use or operation of the automobile.

(12) **Motion to determine if threshold met; non-pecuniary loss.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before trial with the consent of the parties or in accordance with an order of a judge who conducts a pre-trial conference, determine for the purpose of subsection (5) whether, as a result of the use or operation of the automobile, the injured person has died or has sustained,

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important physical, mental or psychological function.

(13) **Determination binding.**—The determination of a judge on a motion under subsection (11) or (12) is binding on the parties at the trial.

(14) **Determination at trial; health care expenses.**—If no motion is made under subsection (11), the trial judge shall determine for the purpose of subsection (4) whether the injured person has sustained a catastrophic impairment arising directly or indirectly from the use or operation of the automobile.

(15) **Determination at trial; non-pecuniary loss.**—If no motion is made under subsection (12), the trial judge shall determine for the purpose of subsection (5) whether, as a result of the use or operation of the automobile, the injured person has died or has sustained,

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important physical, mental or psychological function. S.O. 1996, c. 21, s. 29.

267.6 (1) No action by uninsured owner or lessee.—Despite any other Act, a person is not entitled in an action in Ontario to recover any loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile if, at the time of the incident, the person was contravening subsection 2(1) of the *Compulsory Automobile Insurance Act* in respect of that automobile.

(2) **Prosecution not necessary.**—Subsection (1) applies whether or not the person was prosecuted for or convicted of an offence under the *Compulsory Automobile Insurance Act*. S.O. 1996, c. 21, s. 29.

267.7 (1) Joint and several liability with other tortfeasors.—If, in an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, one or more protected defendants and one or more other persons are found to be liable for damages,

- (a) the other persons,
 - (i) are jointly and severally liable with the protected defendants for the damages for which the protected defendants are liable, having regard to section 267.5, and
 - (ii) are solely liable for any amount by which the amount mentioned in sub-clause (i) is less than the amount that the other persons would have been liable to make contribution and indemnify the protected defendants in respect of damages in the absence of section 267.5;
- (b) the other persons are liable to make contribution and indemnify the protected defendants in respect of damages to the same extent as if section 267.5 did not apply, up to the amount for which the protected defendants are liable having regard to section 267.5; and
- (c) the protected defendants are liable to make contribution and indemnify the other persons for the amount that the protected defendants are liable, having regard to section 267.5, reduced by the amount that the other persons are liable to make contribution and indemnify the protected defendants under clause (b).

(2) **Separate determinations.**—Liability shall be determined under subsection (1) separately for each of the following categories of damages:

- 1. Damages for income loss and loss of earning capacity.
- 2. Damages for expenses that have been incurred or will be incurred for health care.
- 3. Damages for pecuniary loss, other than damages referred to in paragraphs 1 and 2.
- 4. Damages for non-pecuniary loss, including damages for non-pecuniary loss under clause 61(2)(e) of the *Family Law Act*.

(3) **Determination of liability.**—For the purposes of subsection (1), the liability of all persons involved in the incident from which the action arose shall be determined as though all persons wholly or partly responsible for the damages were parties to the action even though any of those persons is not actually a party. S.O. 1996, c. 21, s. 29.

267.8 (1) Collateral benefits; income loss and loss of earning capacity.—In an action for loss or damage from bodily injury or death arising directly or indirectly

from the use or operation of an automobile, the damages to which a plaintiff is entitled for income loss and loss of earning capacity shall be reduced by the following amounts:

1. All payments in respect of the incident that the plaintiff has received or that were available before the trial of the action for statutory accident benefits in respect of the income loss and loss of earning capacity.
2. All payments in respect of the incident that the plaintiff has received or that were available before the trial of the action for income loss or loss of earning capacity under the laws of any jurisdiction or under an income continuation benefit plan.
3. All payments in respect of the incident that the plaintiff has received before the trial of the action under a sick leave plan arising by reason of the plaintiff's occupation or employment.

(2) **Exception.**—No reduction shall be made under subsection (1) for payments in respect of income loss if the payments are in respect of income loss suffered in the seven days after the incident.

(3) **Priority with other tortfeasors.**—If persons other than protected defendants are liable for damages for income loss or loss of earning capacity, the reduction required by subsection (1) shall first be applied to the damages for which the protected defendants and the other persons are jointly and severally liable under subclause 267.7(1)(a)(i), and any excess shall be applied to the amount for which the other persons are solely liable under subclause 267.7(1)(a)(ii).

(4) **Collateral benefits; health care expenses.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages to which a plaintiff is entitled for expenses that have been incurred or will be incurred for health care shall be reduced by the following amounts:

1. All payments in respect of the incident that the plaintiff has received or that were available before the trial of the action for statutory accident benefits in respect of the expenses for health care.
2. All payments in respect of the incident that the plaintiff has received before the trial of the action under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law.

(5) **Exception.**—Paragraph 2 of subsection (4) does not apply to a payment made by the Ministry of Health if the action is brought under section 30 of the *Health Insurance Act*.

(6) **Collateral benefits; other pecuniary loss.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages to which a plaintiff is entitled for pecuniary loss, other than the damages for income loss or loss of earning capacity and the damages for expenses that have been incurred or will be incurred for health care, shall be reduced by all payments

in respect of the incident that the plaintiff has received or that were available before the trial of the action for statutory accident benefits in respect of pecuniary loss, other than income loss, loss of earning capacity and expenses for health care.

(7) **Collateral benefits; non-pecuniary loss.**—In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages in respect of non-pecuniary loss to which a plaintiff is entitled shall not be reduced because of any payments or benefits that the plaintiff has received or is entitled to receive.

(8) **Contributory negligence.**—The reductions required by subsections (1), (4) and (6) shall be made after any apportionment of damages required by section 3 of the *Negligence Act*.

(9) **Future collateral benefits.**—A plaintiff who recovers damages for income loss, loss of earning capacity, expenses that have been or will be incurred for health care, or other pecuniary loss in an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile shall hold the following amounts in trust:

1. All payments in respect of the incident that the plaintiff receives after the trial of the action for statutory accident benefits in respect of income loss or loss of earning capacity.
2. All payments in respect of the incident that the plaintiff receives after the trial of the action for income loss or loss of earning capacity under the laws of any jurisdiction or under an income continuation benefit plan.
3. All payments in respect of the incident that the plaintiff receives after the trial of the action under a sick leave plan arising by reason of the plaintiff's occupation or employment.
4. All payments in respect of the incident that the plaintiff receives after the trial of the action for statutory accident benefits in respect of expenses for health care.
5. All payments in respect of the incident that the plaintiff receives after the trial of the action under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law.
6. All payments in respect of the incident that the plaintiff receives after the trial of the action for statutory accident benefits in respect of pecuniary loss, other than income loss, loss of earning capacity and expenses for health care.

(10) **Payments from trust.**—A plaintiff who holds money in trust under subsection (9) shall pay the money to the persons from whom damages were recovered in the action, in the proportions that those persons paid the damages.

(11) **Disputes.**—Any dispute concerning a plaintiff's liability to make payments under subsection (10) shall, on the request of a person who claims to be entitled to a

payment under that subsection, be submitted to arbitration in accordance with the *Arbitration Act, 1991*.

(12) **Assignment of future benefits.**—The court that heard and determined the action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of the automobile, on motion, may order that, subject to any conditions the court considers just,

- (a) the plaintiff who recovered damages in the action assign to the defendants or the defendants' insurers all rights in respect of all payments to which the plaintiff who recovered damages is entitled in respect of the incident after the trial of the action,
 - (i) for statutory accident benefits in respect of income loss or loss of earning capacity,
 - (ii) for income loss or loss of earning capacity under the laws of any jurisdiction or under an income continuation benefit plan,
 - (iii) under a sick leave plan arising by reason of the plaintiff's occupation or employment,
 - (iv) for statutory accident benefits in respect of expenses for health care,
 - (v) under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law, and
 - (vi) for statutory accident benefits in respect of pecuniary loss, other than income loss, loss of earning capacity and expenses for health care; and
- (b) the plaintiff who recovered damages in the action co-operate with the defendant or the defendants' insurers in any claim or proceeding brought by the defendants or the defendants' insurers in respect of a payment assigned pursuant to clause (a).

(13) **Application of subs. (9).**—Subsection (9) no longer applies if an order is made under subsection (12).

(14) **Pension Benefits Act.**—Subsections (9) to (13) prevail over sections 65, 66 and 67 of the *Pension Benefits Act* in the event of a conflict.

(15) **Workers' Compensation Act.**—Payments or benefits received or that were, are or may become available to a person under the *Workers' Compensation Act* shall not be applied under subsection (1), (4) or (6) to reduce the damages awarded.

(16) **Same.**—A reduction made under subsection (1), (4) or (6) does not apply for the purpose of determining a person's entitlement to compensation under subsection 10(2) of the *Workers' Compensation Act*.

(17) **Limitation on subrogation.**—A person who has made a payment described in subsection (1), (4) or (6) is not subrogated to a right of recovery of the insured against another person in respect of that payment.

(18) **Exception.**—Subsection (17) does not apply if,

- (a) the Ministry of Health made the payment; and
- (b) the right of recovery is against a person other than a person insured under a motor vehicle liability policy issued in Ontario.

(19) **Workers' Compensation Board.**—The Workers' Compensation Board is not subrogated to a right of recovery of the insured against another person in respect of a payment or benefit paid by the Workers' Compensation Board to the insured or in respect of a liability to make such payment or benefit.

(20) **Determination of liability.**—For the purposes of subsections (1), (3), (4) and (6), the damages payable by a person who is a party to the action shall be determined as though all persons wholly or partly responsible for the damages were parties to the action even though any of those persons is not actually a party.

(21) **Interpretation.**—For the purpose of subsection (1), (4) or (6), a payment shall be deemed not to be available to a plaintiff if the plaintiff made an application for the payment and the application was denied.

(22) **Same.**—Subsection (21) does not apply if the court is satisfied that the plaintiff impaired his or her entitlement to the payment by,

- (a) failing to give any notice required by law of the application for the payment;
- (b) failing to make himself or herself reasonably available for any examination that was requested by the person to whom the application was made and that was required by law; or
- (c) settling in bad faith his or her entitlement to the payment to the detriment of a person found liable for damages in the action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of the automobile. S.O.1996, c. 21, s. 29.

267.9 Proceedings by action.—A proceeding for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile shall be brought only by way of an action. S.O. 1996, c. 21, s. 29.

267.10 Structured judgments.—In the circumstances prescribed by the regulations, the court shall order that an award for damages in an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile shall be paid periodically on such terms as the court considers just. S.O. 1996, c. 21, s. 29.

267.11 (1) No gross-up for income tax.—An award against a protected defendant for income loss or loss of earning capacity in an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile shall not include any amount to compensate the plaintiff for income tax payable on the award.

(2) **Exception.**—Subsection (1) does not apply to an award for income loss or loss of earning capacity under subsection 61(1) of the *Family Law Act*. S.O. 1996, c. 21, s. 29.

268. (1) Statutory accident benefits.—Every contract evidenced by a motor vehicle liability policy, including every such contract in force when the *Statutory Accident Benefits Schedule* is made or amended, shall be deemed to provide for the statutory accident benefits set out in the *Schedule* and any amendments to the *Schedule*, subject to the terms, conditions, provisions, exclusions and limits set out in that *Schedule*.

(1.1)-(1.3) [Repealed S.O. 1996, c. 21, s. 30.]

(1.4) **Indexation.**—Subject to subsection (1.5) and to the terms, conditions, provisions, exclusions and limits established by the *Statutory Accident Benefits Schedule*, the *Schedule* shall provide that, in respect of incidents involving the use or operation after December 31, 1993 and before section 29 of the *Automobile Insurance Rate Stability Act*, 1996 comes into force” of an automobile,

- (a) every continuing periodic amount payable by an insurer as an income replacement benefit, education disability benefit, caregiver benefit or loss of earning capacity benefit in accordance with the *Schedule* shall be revised, effective the 1st day of January in every year after 1994, using the indexation percentage published under subsection 268.1(1); and
- (b) every monetary amount set out in the *Schedule* shall be revised, effective the 1st day of January in every year after 1994, by adjusting the amount by the indexation percentage published under subsection 268.1(1).

(1.5) **No decrease in payments.**—A continuing periodic amount payable by an insurer in accordance with the *Statutory Accident Benefits Schedule* shall not be reduced by the operation of the indexation percentage referred to in subsection (1.4).

(2) **Liability to pay.**—The following rules apply for determining who is liable to pay statutory accident benefits:

1. In respect of an occupant of an automobile,
 - i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
 - iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to no-fault benefits arose,
 - iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.
2. In respect of non-occupants,

- i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
- ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,
- iii. if recovery is unavailable under subparagraph i or ii, the non-occupant has recourse against the insurer of the automobile involved in the incident from which the entitlement to no-fault benefits arose,
- iv. if recovery is unavailable under subparagraph i, ii or iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.

(3) **Liability.**—An insurer against whom a person has recourse for the payment of no-fault benefits is liable to pay the benefits.

(4) **Choice of insurer.**—If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of no-fault benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits.

(5) **Same.**—Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant, as defined in the *Statutory Accident Benefits Schedule*, of a named insured, the person shall claim statutory accident benefits against the insurer under that policy.

(5.1) **Same.**—Subject to subsection (5.2), if there is more than one insurer against which a person may claim benefits under subsection (5), the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits.

(5.2) **Same.**—If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, at the time of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependent of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant.

(6) **Excess insurance.**—The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

(7) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

(8) **Payments pending dispute resolution.**—Where the *Statutory Accident Benefits Schedule* provides that the insurer will pay a particular statutory accident benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved. S.O. 1993, c. 10, s. 26(1), (2); S.O. 1996, c. 21, s. 30.

268.1 (1) Publication of indexation percentage.—Before the 1st day of January in each year after 1994, the Minister shall determine in accordance with this section and

publish in *The Ontario Gazette* the indexation percentage to be used effective the 1st day of January under subsection 268(1.4).

(2) **Rules for determination.**—The following rules apply to the determination of the indexation percentage to be used under subsection 268(1.4) effective the 1st day of January in a year:

1. The indexation percentage shall be the percentage change in the Consumer Price Index for Canada (All Items), as published by Statistics Canada under the authority of the *Statistics Act* (Canada), for the period from September in the year immediately preceding the previous year to September of the previous year.
2. Despite paragraph 1, if the Consumer Price Index information required by paragraph 3 to determine the indexation percentage is not available by the 1st day of November in the previous year, or if in the Minister's opinion the information published by Statistics Canada does not provide a reasonable reflection of changes in consumer prices, the Minister may determine the indexation percentage in a manner that the Minister considers will provide a reasonable reflection of changes in consumer prices.

(3) **Publication of monetary amounts in Schedule.**—At the time an indexation percentage is published under subsection (1), the Minister shall publish in *The Ontario Gazette* the amounts to which the monetary amounts set out in the *Statutory Accident Benefits Schedule* shall be revised, effective the 1st day of January, in accordance with clause 268(1.4)(b). S.O. 1993, c. 10, s. 27.

268.2 Rules of interpretation.—The *Statutory Accident Benefits Schedule* shall be interpreted in accordance with the rules made under paragraph 10.2 of subsection 121(1). S.O. 1993, c. 10, s. 27; S.O. 1996, c. 21, s. 31.

268.3 (1) Guidelines.—The Commissioner may issue guidelines on the interpretation and operation of the *Statutory Accident Benefits Schedule* or any provision of that *Schedule*. S.O. 1993, c. 10, s. 27.

(2) **Effect of guideline.**—Subject to section 268.2, a guideline shall be considered in any determination involving the interpretation of the *Statutory Accident Benefits Schedule*.

(3) **Effective date.**—A guideline takes effect on the day it is published in *The Ontario Gazette*.

269. (1) Particulars of insurance.—A person who is entitled to no-fault benefits or his or her personal representative is entitled to particulars as to whether the owner or operator of any automobile against whom the person may have a claim has insurance that provides for no-fault benefits and the name of the insurer, if any.

(2) **Demand for particulars.**—The person or his or her personal representative may demand the particulars described in subsection (1) by registered mail from the owner or operator of the automobile or the insurer, if any, of either of them.

(3) **Reply.**—Every owner, operator and insurer shall comply with a demand under subsection (2) within ten days of receiving the demand.

270. Rights of unnamed insured.—Any person insured by but not named in a contract to which section 265 or 268 applies may recover under the contract in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

271. (1) Payment into court.—Where an insurer admits liability for insurance money payable under section 265 or 268 and it appears that,

- (a) there are adverse claimants;
- (b) the whereabouts of an insured person entitled is unknown; or
- (c) subject to subsections (1.1) and (1.2) there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so,

the insurer may, at any time after thirty days after the date upon which the insurance money becomes payable, apply to the court *ex parte* for an order for payment of the money into the Ontario Court (General Division), and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

(1.1) **Minors.**—If an insurer admits liability for insurance money payable to a minor under section 265 or 268, the insurer shall pay the money and any applicable interest into the Ontario Court (General Division) to the credit of the minor.

(1.2) **Same, affidavit.**—No order is necessary for payment into the Ontario Court (General Division) under subsection (1.1), but the proper officer of the court shall receive the money if the insurer files with the court an affidavit showing the amount payable and the name, date of birth and residence of the minor.

(1.3) **Same, notice to Official Guardian.**—The insurer shall promptly give the Official Guardian notice of a payment into court under subsection (1.2) and a copy of the affidavit filed under that subsection.

(1.4) **Same, authorized payments.**—An insurer may, despite subsection (1.1), pay insurance money and applicable interest payable to a minor under section 265 or 268 to,

- (a) the guardian of the property of the minor, appointed under section 47 of the *Children's Law Reform Act*;
- (b) a person referred to in subsection 51(1) of the *Children's Law Reform Act*, if the payment does not exceed the amount set out in that subsection; or
- (c) the minor, if payment directly to the minor is authorized by the regulations.

(2) **Discharge of insurer.**—The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into the Ontario Court (General Division), and the insurance money shall be dealt with as the court orders. S.O. 1993, c. 10, s. 28(1), (2).

272. (1) Limitation of action.—Every proceeding against any insurer under a contract in respect of insurance provided under section 265 must be commenced within

the limitation period specified in the contract, but in no event shall the limitation period be less than two years after the happening of the accident.

(2) **Idem.**—Every proceeding against any insurer under a contract in respect of insurance provided under section 268 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than the period described in subsection 281(5).

273. (1) Claimant's obligation to inform.—Where any person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or upon or entering or getting onto or alighting from or as a result of being struck by an automobile, he shall furnish the person against whom the claim is made full particulars of all insurance available to the claimant under contracts falling within the scope of section 268.

(2) **Claim for statutory accident benefits.**—If a person makes a claim for statutory accident benefits, the person shall furnish the person against whom the claim is made with full particulars of,

- (a) all insurance available to the person under contracts to which subsection 268(1) applies;
- (b) any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan under which benefits are available to the person;
- (c) any income continuation benefit plan that provides benefits for loss of income under which benefits are available to the person;
- (d) any law of a jurisdiction outside Canada under which benefits are available to the person; and
- (e) any claim made by the person under a sick leave plan arising by reason of the person's occupation or employment. S.O. 1993, c. 10, s. 29.

273.1 (1) Information to Ministry of Community and Social Services, etc.—Every insurer shall provide the Ministry of Community and Social Services, a municipality, a board established under the *District Welfare Administration Boards Act* or a band approved under section 15 of the *General Welfare Assistance Act* with such information as may be prescribed by the regulations, including personal information, subject to such conditions as may be prescribed by the regulations.

(2) **Definitions.**—In this section,

“**insurer**”.—“insurer” includes the Facility Association; (“assureur”)

“**municipality**”.—“municipality” has the same meaning as in the *General Welfare Assistance Act*. (“municipalité”) S.O. 1996, c. 21, s. 32.

274. Release.—Payments made or available to a person under the *Statutory Accident Benefits Schedule* constitute, to the extent of such payments, a release by the person, the person's personal representatives, the person's insurer or any one claiming through or under the person or by virtue of Part V of the *Family Law Act*,

- (a) of any claim under subsection 265(1) or 268(1), if the claim arises directly or

indirectly from the use or operation, before January 1, 1994 of an automobile; and

- (b) of any claim under subsection 268(1), if the claim arises directly or indirectly from the use or operation, on or after January 1, 1994 of an automobile.

(2) **Same; accidents after *Automobile Insurance Rate Stability Act, 1996*.**—Payments made or available to a person under the *Statutory Accident Benefits Schedule* in respect of a claim arising directly or indirectly from the use or operation, after section 29 of the *Automobile Insurance Rate Stability Act, 1996* comes into force, of an automobile constitute, to the extent of the payments, a release by the person, the person's personal representatives, the person's insurer and anyone claiming through or under the person or by virtue of Part V of the *Family Law Act*,

- (a) of any claim under subsection 268(1); and
- (b) to the extent that the payments are made in respect of lost income, of any claim under subsection 265(1). S.O. 1993, c. 10, s. 30; S.O. 1996, c. 21, s. 33.

275. (1) Indemnification in certain cases.—The insurer responsible under subsection 268(2) for the payment of no-fault benefits to such classes of persons as may be named in the regulations is entitled, subject to such terms, conditions, provisions, exclusions and limits as may be prescribed, to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulations involved in the incident from which the responsibility to pay the no-fault benefits arose.

(2) **Idem.**—Indemnification under subsection (1) shall be made according to the respective degree of fault of each insurer's insured as determined under the fault determination rules.

(3) **Deductible.**—No indemnity is available under subsection (2) in respect of the first \$2,000 of no-fault benefits paid in respect of a person described in that subsection.

(4) **Arbitration.**—If the insurers are unable to agree with respect to indemnification under this section, the dispute shall be resolved through arbitration under the *Arbitrations Act*.

(5) **Stay of arbitration.**—No arbitration hearing shall be held with respect to indemnification under this section if, in respect of the incident for which indemnification is sought, any of the insurers and an insured are parties to a mediation under section 280, an arbitration under section 282, an appeal under section 283 or a proceeding in a court in respect of statutory accident benefits. S.O. 1993, c. 10, s. 31.

276. Terms of certain insurances.—Subject to subsection 227(1), an insurer may in a policy,

- (a) provide insurance that is less extensive in scope than the insurance mentioned in section 265; and
- (b) provide the terms of the contract that relate to the insurance mentioned in section 265.

Other Insurance

277. (1) Other insurance.—Subject to section 255, insurance under a contract evidenced by a valid owner's policy of the kind mentioned in the definition of "owner's policy" in section 1 is, in respect of liability arising from or occurring in connection with the ownership or directly or indirectly with the use or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance, and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

(2) **Idem.**—Subject to sections 255 and 268 and to subsection (1) of this section, if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of or against loss of or damage to an automobile or otherwise, of the insured's interest in the subject-matter of the contract or any part thereof, the insurer is liable only for its rateable proportion of any liability, expense, loss or damage.

(3) **Rateable proportion defined.**—"Rateable proportion" as used in subsection (2) means,

- (a) if there are two insurers liable and each has the same policy limits, each of the insurers shall share equally in any liability, expense, loss or damage;
- (b) if there are two insurers liable with different policy limits, the insurers shall share equally up to the limit of the smaller policy limit;
- (c) if there are more than two insurers liable, clauses (a) and (b) apply with necessary modifications.

Subrogation

278. (1) Subrogation.—An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

(2) **Pro-rating recovery.**—Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

(3) **Action when s. 261 applies.**—Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which section 261 applies, the insurer shall have control of the action.

(4) **Application to court.**—Where the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to

- (a) the solicitors to be instructed to bring the action in the name of the insured;
- (b) the conduct and carriage of the action or any matters pertaining thereto;

- (c) any offer of settlement or the apportionment thereof, whether action has been commenced or not;
- (d) the acceptance of any money paid into court or the apportionment thereof;
- (e) the apportionment of costs; or
- (f) the launching or prosecution of an appeal,

either party may apply to the Ontario Court (General Division) for the determination of the matters in question, and the court shall make such order as it considers reasonable having regard to the interests of the insured and the insured in any recovery in the action or proposed action or in any offer of settlement.

(5) **Idem.**—On an application under subsection (4), the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible upon the trial of an action brought by or against the insured or the insurer.

(6) **Concurrence in settlement or release.**—A settlement or release given before or after an action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein.

Dispute Resolution — Statutory Accident Benefits

279. (1) Dispute resolution, procedure to be followed.—Disputes in respect of any insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled shall be resolved in accordance with sections 280 to 283 and the *Statutory Accident Benefits Schedule*.

(2) **Opting out.**—Any restriction on a party's right to mediate, litigate, appeal or apply to vary an order as provided in sections 280 or 284, or on a party's right to arbitrate under section 282, is void except as provided in the regulations.

(3) **Definition.**—For the purposes of this section and sections 280 to 284, "insured person" includes a person who is claiming funeral expenses or a death benefit under the *Statutory Accident Benefits Schedule*.

(4) **Orders.**—The Director and every arbitrator appointed by the Director shall determine issues before them by order and may make an order subject to such conditions as are set out in the order.

(4.1) **Interim orders.**—The Director and every arbitrator appointed by the Director may make interim orders pending the final order in any matter before the Director or arbitrator.

(5) **Power to bind parties.**—If an insurer or an insured is represented in a mediation under section 280, an evaluation under section 280.1, an arbitration under section 282, an appeal under section 283 or a variation proceeding under section 284, the mediator, person performing the evaluation, arbitrator or Director, as the case may be, may adjourn the proceeding, with or without conditions, if the representative is not authorized to bind the party he or she represents. S.O. 1993, c. 10, s. 32(1), (2); S.O. 1996, c. 21, s. 34(4).

280. (1) Mediation.—Either the insured person or the insurer may refer to a mediator any issue in dispute in respect of the insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which the insured person is entitled.

(2) **Starting the process.**—The party seeking mediation shall file an application for the appointment of a mediator with the Commission.

(3) **Mediator's appointment.**—The Director shall ensure that a mediator is appointed promptly.

(4) **Mediation.**—The mediator shall enquire into the issues in dispute and attempt to effect a statement of as many of the issues as possible within the time prescribed in the regulations for the settlement of the type of dispute in question.

(5) **Extension of time.**—The parties may by agreement extend the time for the completion of the mediation process, even if the time for completion has expired.

(6) **Notice of failure.**—If at any time before a settlement is effected the mediator is of the opinion that mediation will fail, he or she shall forthwith notify the parties.

(7) **Idem.**—Mediation has failed when the mediator has given notice to the parties that in his or her opinion mediation will fail, or when the prescribed or agreed time for mediation has expired and no settlement has been reached.

(8) **Report.**—If mediation fails, the mediator, in addition to any notice required to be given, shall prepare and give to the parties a report,

- (a) setting out the insurer's last offer and the mediator's description of the issues that remain in dispute;
- (b) containing a list of materials requested by the parties that have not been produced and that, in the opinion of the mediator, were required for the purpose of discussing a settlement of the issues; and
- (c) containing a recommendation as to whether or not the issues in dispute should be referred for an evaluation under section 280.1.

(9) **Same.**—The mediator may give his or her report to a person performing an evaluation under section 280.1 or an arbitrator conducting an arbitration under section 282. S.O. 1996, c. 21, s. 35(2).

280.1 (1) Neutral evaluation.—If mediation fails, the parties jointly or the mediator who conducted the mediation may, for the purpose of assisting in the resolution of the issues in dispute, refer the issues in dispute to a person appointed by the Director for an evaluation of the probable outcome of a proceeding in court or an arbitration under section 282.

(2) **Evaluator's appointment.**—The Director shall ensure that a person is appointed promptly to perform the evaluation requests.

(3) **Information.**—The insurer and the insured person shall provide the person performing the evaluation with any information that he or she requests.

(4) **Opinion and report.**—The person performing the evaluation shall give the parties,

- (a) an oral opinion on the probable outcome of a proceeding in court or an arbitration under section 282; and
- (b) a written report,
 - (i) stating that the issues in dispute were evaluated by the person,
 - (ii) identifying the issues that were evaluated,
 - (iii) identifying the issues that remain in dispute,
 - (iv) setting out the insurer's last offer, and
 - (v) containing a list of materials requested by the person performing the evaluation that were not provided by the parties.

(5) **Same.**—The person who performed the evaluation may give his or her written report to an arbitrator conducting an arbitration under section 282. S.O. 1996, c. 21, s. 36.

281. (1) Litigation or arbitration.—Subject to subsection (2),

- (a) the insured person may bring a proceeding in a court of competent jurisdiction;
- (b) the insured person may refer the issues in dispute to an arbitrator under section 282; or
- (c) the insurer and the insured person may agree to submit any issue in dispute to any person for arbitration in accordance with the *Arbitration Act, 1991*.

(2) **Limitation.**—No person may bring a proceeding in any court, refer the issues in dispute to an arbitrator under section 282 or agree to submit an issue for arbitration in accordance with the *Arbitration Act, 1991* unless mediation was sought, mediation failed and, if the issues in dispute were referred for an evaluation under section 280.1, the report of the person who performed the evaluation has been given to the parties.

(3) **Payment pending dispute resolution.**—Subject to subsection (4), if mediation fails, the insurer shall pay statutory accident benefits in accordance with the last offer of settlement that it had made before the failure until otherwise agreed by the parties or until otherwise ordered by a court, by an arbitrator acting under this Act or the *Arbitration Act, 1991*, or by the Director.

(4) **Same.**—If a dispute involves a statutory accident benefit that the insurer is required to pay under subsection 268(8) and no step authorized by subsection (1) has been taken within 45 days after the day mediation failed, the insurer shall pay the insured in accordance with the last offer made by the insurer before the failure until otherwise agreed by the parties or until otherwise ordered by a court, by an arbitrator acting under this Act or the *Arbitrations Act, 1991*, or by the Director.

(5) **Limitation period.**—A step authorized by subsection (1) must be taken within two years after the insurer's refusal to pay the benefit claimed or within such longer period as may be provided in the *Statutory Accident Benefits Schedule*. S.O. 1996, c. 21, s. 37.

282. (1) Arbitration, starting the process.—An insured person seeking arbitration under this section shall file an application for the appointment of an arbitrator with the Commission.

(2) Arbitrator's appointment.—The Director shall ensure that an arbitrator is appointed promptly.

(3) Determination of issues.—The arbitrator shall determine all issues in dispute, whether the issues are raised by the insured person or the insurer.

(4) Procedures.—The arbitration shall be conducted in accordance with the procedures and within the time-limits set out in the regulations.

(5)-(9) [Repealed S.O. 1996, c. 21, s. 30.]

(10) Special award.—If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the *Statutory Accident Benefits Schedule*, shall award a lump sum of up to 50 per cent of the amount of which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.

(11) Expenses.—The arbitrator may award, according to criteria prescribed by the regulations, to the insured person or the insurer, all or part of such expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations, to the maximum set out in the regulations.

(11.1) Interim award of expenses.—The arbitrator may at any time during an arbitration proceeding make an interim award of expenses, subject to such terms and conditions as may be established by the arbitrator.

(11.2) Assessment against insured person.—If an insured person commences an arbitration that, in the opinion of the arbitrator, is frivolous, vexatious or an abuse of process, the arbitrator may award an amount to be paid by the insured person to the insurer that does not exceed the amount assessed against the insurer in respect of the arbitration under section 14.

(12) Bias.—A party may apply to the Director for the appointment of a new arbitrator if the party believes that the arbitrator is biased and the Director shall determine the issue.

(13) Copies of decision.—The arbitrator, forthwith upon making a decision in an arbitration, shall deliver a copy of his or her order together with a copy of the arbitrator's written reasons, if any, to the insured person, the insurer and the Director.

(14)-(15) [Repealed S.O. 1996, c. 21, s. 38.]

(16) Non-application of the *Arbitrations Act*.—The *Arbitrations Act* does not apply to arbitrations under this section. S.O. 1993, c. 10, s. 33; S.O. 1996, c. 21, s. 38.

283. (1) Appeal.—A party to an arbitration under section 282 may appeal the order of the arbitrator to the Director on a question of law.

(2) **Notice of appeal.**—A notice of appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the arbitrator's order and the appellant shall serve the notice on the respondent.

(3) **Extension of time for appeal.**—The Director may extend the time for requesting an appeal, before or after the time for requesting the appeal has expired, if the Director is satisfied that there are reasonable grounds for granting the extension, and the Director may give such directions as he or she considers proper as a condition of granting the extension.

(4) **Nature of appeal.**—The Director may determine the appeal on the record or in such other manner as the Director may decide, with or without a hearing.

(5) **Power of the Director.**—The Director may confirm, vary or rescind the order appealed from or substitute his or her order for that of the arbitrator.

(6) **Order not stayed.**—An appeal does not stay the order of the arbitrator unless the Director decides otherwise.

(7) **Medical reports, special awards, expenses.**—Subsections 282(10) to (11.2) apply with necessary modifications to appeals before the Director.

(8) **Interventions.**—The Director may permit persons who are not parties to the appeal to make submissions on issues of law arising in an appeal. S.O. 1993, c. 10, s. 34; S.O. 1996, c. 21, s. 39.

284. (1) Application for variation.—Either the insured person or the insurer may apply to the Director to vary or revoke an order made by the Director or an arbitrator appointed by the Director.

(2) **Idem.**—If an application is made to vary or revoke an arbitrator's order, the Director may decide the matter or he or she may appoint the same arbitrator or some other arbitrator to determine it.

(3) **Powers on variation.**—If the arbitrator or Director is satisfied that there has been a material change in the circumstances of the insured or that evidence not available on the arbitration or appeal has become available or that there is an error in the order, the arbitrator or Director may vary or revoke the order and may make a new order if he or she considers it advisable to do so.

(4) **Idem.**—An order made, varied or revoked under subsection (3) may be prospective or retroactive.

(5) **Application of subss. 282(11-11.2).**—Subsections 282(11) to (11.2) apply with necessary modifications to an application under this section. S.O. 1993, c. 10, s. 35; S.O. 1996, c. 21, s. 40(2).

285. (1) Stated case.—The Director may state a case in writing for the opinion of the Divisional Court upon any question that, in his or her opinion, is a question of law.

(2) **Idem.**—The Divisional Court shall hear and determine the stated case.

286. When arbitrator cannot act.—An arbitrator appointed by the Director cannot vary or revoke an order made by him or her and cannot make a new order to replace an order made by him or her if the order is under appeal. S.O. 1996, c. 21, s. 41.

287. Protection of benefits.—An insurer shall not, after an order of the Director or of an arbitrator appointed by the Director, reduce benefits to an insured person on the basis of an alleged change of circumstances, alleged new evidence or an alleged error, unless the insured person agrees or unless the Director or an arbitrator so orders in a variation or appeal proceeding under section 283 or 284. S.O. 1996, c. 21, s. 42.

288. Finding of possible unfair or deceptive business practice.—The Director shall review arbitration orders and may recommend to the Superintendent that the Superintendent investigate the business practices of an insurer if the Director is of the opinion that any one or more arbitrations or appeals from arbitrations reveal unfair or deceptive business practices. S.O. 1996, c. 21, s. 43.

Changes to Statutory Accident Benefits Schedule

289. Reports to the Assembly.—At least once every two years, the Minister shall table a report before the Assembly in respect of the adequacy of statutory accident benefits and setting out changes made to the *Statutory Accident Benefits Schedule* since the last report and changes that are proposed to the *Statutory Accident Benefits Schedule* at the time of the report.

PART VII

ACCIDENT AND SICKNESS INSURANCE

Interpretation

290. Definitions.—In this Part,

“**application**”,—“application” means a written application for insurance or for the reinstatement of insurance;

“**beneficiary**”,—means a person designated or appointed in a contract or by a declaration, other than the insured or his personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid;

“**blanket insurance**”,—“blanket insurance” means that class of group insurance that covers loss arising from specific hazards incident to or defined by reference to a particular activity or activities;

“**contract**”,—“contract” means a contract of insurance;

“**court**”,—“court” means the Ontario Court (General Division), or a judge thereof;

“creditor’s group insurance”.—“creditor’s group insurance” means insurance effected by a creditor whereby the lives or well-being or the lives and well-being, of a number of his debtors are insured severally under a single contract:

“declaration”.—“declaration” means an instrument signed by the insured,

- (a) with respect to which an endorsement is made on the policy, or
- (b) that identifies the contract, or
- (c) that describes the insurance or insurance fund or a part thereof,

in which he designates or alters or revokes the designation of his personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money that is payable in the event of death by accident;

“family insurance”.—“family insurance” means insurance whereby the lives or well-being, or the lives and well-being, of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

“group insurance”.—“group insurance” means insurance other than creditor’s group insurance and family insurance, whereby the lives or well-being, or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

“group person insured”.—“group person insured” means a person who is insured under a contract of group insurance and upon whom a right is conferred by the contract, but does not include a person who is insured thereunder as a person dependent upon or related to him;

“instrument”.—“instrument” includes a will;

“insurance”.—“insurance” means accident insurance, sickness insurance, or accident insurance and sickness insurance;

“insured”.—“insured”,

- (a) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured, and
- (b) in all other cases means the person who makes a contract with an insurer;

“person insured”.—“person insured” means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;

“will”.—“will” includes a codicil.

291. (1) Application of Part.—Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to contracts made in Ontario on or after the 1st day of October, 1970.

- (2) **Idem.**—In the case of contracts made before and in effect on that day,
- (a) this section and sections 290, 292, 293, 302, 305, 306, 307 and 311, and sections 313 to 329 of this Part apply; and
- (b) sections 230, 231, 232, 233, 235, 242 and 245 of *The Insurance Act*, as it existed immediately before the 1st day of October, 1970, continue to apply.
- (3) **Exceptions.**—This Part does not apply to,
- (a) accidental death insurance; or
- (b) creditor's group insurance; or
- (c) disability insurance; or
- (d) insurance provided under section 265 or 268.

292. Group insurance.—In the case of a contract of group insurance made with an insurer authorized to transact insurance in Ontario at the time the contract was made, this Part applies in determining,

- (a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in Ontario at the time he or she became insured; and
- (b) the rights and obligations of the group person insured if he was resident in Ontario at the time he or she became insured.

293. Issue of policy.—An insurer entering into a contract shall issue a policy.

294. (1) Exceptions.—This section does not apply to,

- (a) a contract of group insurance; or
- (b) a contract made by a fraternal society.

(2) **Contents of policy.**—An insurer shall set forth the following particulars in the policy;

1. The name or a sufficient description of the insured and of the person insured.
2. The amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable.
3. The amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid.
4. The conditions upon which the contract may be reinstated if it lapses.
5. The term of the insurance or the method of determining the day upon which the insurance commences and terminates.

295. Confinement clauses void.—Where a contract of accident insurance or sickness insurance issued after the 2nd day of November, 1973 includes a provision that a benefit is payable to an insured on account of his disability and the provision is conditional on the confinement of the insured, the condition does bind the insured.

296. Contents of group policy.—In the case of a contract of group insurance, an insurer shall set forth the following particulars in the policy:

1. The name or a sufficient description of the insured.
2. The method of determining the group persons insured and persons insured.
3. The amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable.
4. The period of grace, if any, within which the premium may be paid.
5. The term of the insurance or the method of determining the day upon which the insurance commences and terminates.

297. (1) Continuation of accident and sickness insurance where contract terminated.—Where a contract of group accident and sickness insurance, or a benefit provision therein, is terminated, the insurer continues to be liable to pay to or in respect of any group person insured under the contract benefits under the contract relating to,

- (a) loss of income because of disability; or
- (b) death; or
- (c) dismemberment,

arising from an accident or sickness that occurred before the termination of the contract or benefit provision as though the contract or benefit provision had remained in full force and effect; but the insurer is not liable to pay a benefit for loss of income because of disability in respect of the recurrence of disability arising from an accident or sickness that occurred before the termination of the contract or benefit provision if the recurrence occurs after the termination of the contract or benefit provision and after a period of ninety days, or such longer period as is provided in the contract, during which the group person insured was not disabled.

(2) Preservation of rights where contract replaced.—Where a contract of group accident and sickness insurance (herein referred to as the “replacing contract”) is entered into within thirty-one days of the termination of another contract of group accident and sickness insurance (herein referred to as the “other contract”) and insures the same group or a part of the group insured under the other contract,

- (a) the replacing contract shall provide or shall be deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacing contract from and after the termination of the other contract if,
 - (i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and
 - (ii) the person is a member of a class eligible for insurance under the replacing contract;
- (b) every person who was insured under the other contract and who is insured under

the replacing contract is entitled to receive credit for satisfaction of any deductible earned before the effective date of the replacing contract; and

- (c) no person who was insured under the other contract shall be excluded from eligibility under the replacing contract solely because of not being actively at work on the effective date of the replacing contract.

298. (1) Contents of group certificate.—Except as provided in subsection (2), in the case of a contract of group insurance an insurer shall issue for delivery by the insured to each group person insured a certificate or other document in which are set forth the following particulars:

1. The name of the insurer and a sufficient identification of the contract.
2. The amount or the method of determining the amount of insurance on the group person insured and on any person insured.
3. The circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured.

(2) **Exception.**—This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of six months or less.

299. (1) Exceptions or reduction.—Subject to section 300 and except as otherwise provided in this section, the insurer shall set forth in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction, or under a heading such as “Exceptions” or “Reductions”.

(2) **Idem.**—Where the exception or reduction affects only one provision in the policy it shall be set forth in that provision.

(3) **Idem.**—Where the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider shall, unless it affects all amounts payable under the contract, make reference to the provision in the policy affected by the exception or reduction.

(4) **Idem.**—The exception or reduction mentioned in section 312 need not be set forth in the policy.

(5) **Idem.**—This section does not apply to a contract made by a fraternal society.

300. Statutory conditions.—Subject to section 301, the conditions set forth in this section shall be deemed to be part of every contract other than a contract of group insurance, and shall be printed in English or French on or attached to the policy forming part of such contract with the heading “Statutory Conditions” or “Conditions légales”, as may be appropriate.

Statutory Conditions

1. (1) The Contract.—The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed upon in writing after the

policy is issued, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

(2) **Waiver.**—The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

(3) **Copy of Application.**—The insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

2. **Material Facts.**—No statement made by the insured or person insured at the time of application for this contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

3. (1) **Changes in Occupation.**—If after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in the contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his or her occupation from that stated in this contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either,

- (a) reduce the premium rate; or
- (b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation,

according to the limits, classification of risks, and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

4. **Relation of Earnings to Insurance.**—Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract, including a contract of group accident insurance or group sickness insurance or of both and a life insurance contract providing disability insurance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts and the excess premium, if any, paid by the insured shall be returned to the insured by the insurer.

5. **Termination by Insured.**—The insured may terminate this contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in the Province, or by delivery thereof to an authorized agent of the insurer in the Province, and the insurer shall upon surrender of this policy refund the

amount of premium paid in excess of the short rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

6. (1) Termination by Insurer.—The insurer may terminate this contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the proportional premium for the expired time.

(2) The notice of termination may be delivered to the insured, or it may be sent by registered mail to the latest address of the insured on the records of the insurer.

(3) Where the notice of termination is delivered to the insured, five days notice of termination shall be given; where it is mailed to the insured, ten days notice of termination shall be given, and the ten days shall begin on the day following the date of mailing of notice.

7. (1) Notice and Proof of Claim.—The insured or a person insured, or a beneficiary entitled to make a claim, or the agent of any of them, shall,

- (a) give written notice of claim to the insurer,
 - (i) by delivery thereof, or by sending it by registered mail to the head office or chief agency of the insurer in the Province, or
 - (ii) by delivery thereof to an authorized agent of the insurer in the Province, not later than thirty days from the date a claim arises under the contract on account of an accident, sickness or disability;
- (b) within ninety days from the date a claim arises under the contract on account of an accident, sickness or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his or her age, and the age of the beneficiary if relevant; and
- (c) if so required by the insurer, furnish a satisfactory certificate as to the cause of nature of the accident, sickness or disability for which claim may be made under the contract and as to the duration of such disability.

(2) Failure to Give Notice or Proof.—Failure to give notice of claim or furnish proof of claim within the time prescribed by this statutory condition does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

8. Insurer to Furnish Forms for Proof of Claim.—The insurer shall furnish forms for proof of claim within fifteen days after receiving notice of claim, but where the claimant has not received the forms within that time he may submit his proof of claim in the form of a written statement of the cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

9. Rights of Examination.—As a condition precedent to recovery of insurance moneys under this contract,

- (a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending; and
- (b) in the case of death of the person insured, the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.

10. When Moneys Payable Other Than for Loss of Time.—All moneys payable under this contract, other than benefits for loss of time, shall be paid by the insurer within sixty days after it has received proof of claim.

11. When Loss of Time Benefits Payable.—The initial benefits for loss of time shall be paid by the insurer within thirty days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding sixty days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

12. Limitation of Actions.—An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than one year after the date the insurance money became payable or would have become payable if it had been a valid claim.

301. (1) Omission of variation of conditions.—Where a statutory condition is not applicable to the benefits provided by the contract it may be omitted from the policy or varied so that it will be applicable.

(2) **Idem.**—Statutory conditions 3, 4 and 9 may be omitted from the policy if the contract does not contain any provision respecting the matters dealt with therein.

(3) **Idem.**—Statutory conditions 5 and 6 shall be omitted from the policy if the contract does not provide that it may be terminated by the insurer prior to the expiry of any period for which a premium has been accepted.

(4) **Idem.**—Statutory conditions 3, 4, 5, 6 and 9, and subject to the restriction in subsection (5), statutory condition 7, may be varied but, if by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it would be if the condition had not been varied, the condition shall be deemed to be included in the policy in the form in which it appears in section 300.

(5) **Idem.**—Clauses (a) and (b) of subcondition 7(1) of statutory condition 7 may not be varied in policies providing benefits for loss of time.

(6) **Idem.**—Statutory conditions 10 and 11 may be varied by shortening the periods of time prescribed therein, and statutory condition 12 may be varied by lengthening the period of time prescribed therein.

(7) **Idem.**—The title of a statutory condition shall be reproduced in the policy along with the statutory condition, but the number of a statutory condition may be omitted.

(8) **Contract by fraternal society.**—In the case of a contract made by a fraternal society,

- (a) the following provision shall be printed on every policy in substitution for subcondition 1(1):

The Contract

1. (1) This policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions

and

- (b) statutory condition 5 shall not be printed on the policy.

302. Notice of statutory conditions.—In the case of a policy of accident insurance of a non-renewable type issued for a term of six months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to the policy if the policy contains the following notice printed in conspicuous type:

“Notwithstanding any other provision herein contained, this contract is subject to the statutory conditions in the *Insurance Act* respecting contracts of accident insurance.”

303. (1) Termination for non-payment of initial or renewal premium.—Where a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium or in the case of a renewal certificate the renewal premium therefor has not been fully paid,

- (a) the contract or the renewal thereof evidenced by the certificate is as binding on the insurer as if such premium had been paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it; and
- (b) the contract may be terminated for the non-payment of the premium by the insurer upon ten days notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer and the ten days shall begin on the day following the date of mailing such notice.

(2) **Exception.**—This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

304. (1) Right where premium unpaid.—An insurer may,

- (a) deduct unpaid premiums from an amount that it is liable to pay under a contract; or
- (b) sue the insured for unpaid premiums

(2) **Where cheque or note for premium not paid.**—Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole

or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed never to have been paid.

(3) **Exception.**—Clause (1)(a) does not apply to a contract of group insurance.

(4) **Idem.**—This section does not apply to a contract made by a fraternal society.

305. Insurable interest.—Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in the person’s own life and well-being and in the life and well-being of,

- (a) the person’s child or grandchild;
- (b) the person’s spouse;
- (c) any person upon whom the person is wholly or in part dependent for, or from whom the person is receiving, support or education;
- (d) an officer or employee of the person; and
- (e) any person in whom the person has a pecuniary interest.

306. (1) Lack of insurable interest.—Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

(2) **Exceptions.**—A contract is not void for lack of insurable interest,

- (a) if it is a contract of group insurance; or
- (b) if the person insured has consented in writing to the insurance.

(3) **Consent of minors.**—Where the person insured is under the age of sixteen years, consent to the insurance may be given by one of his parents or by a person standing in the role of parent to the person.

Policies On Lives Of Minors

307. Capacity of minors.—Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years,

- (a) to make an enforceable contract; and
- (b) in respect of a contract.

308. (1) Duty to disclose.—An applicant for insurance on his own behalf and on behalf of each person to be insured, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the person’s knowledge that is material to the insurance and is not so disclosed by the other.

(2) **Failure to disclose.**—Subject to sections 309 and 312, a failure to disclose or a misrepresentation of such a fact renders a contract voidable by the insurer.

(3) **Group insurance failure to disclose.**—In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured or a person insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 309, voidable by the insurer.

309. (1) Incontestability.—Subject to section 312 and except as provided in subsection (2),

- (a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by section 308 to be disclosed does not, except in the case of fraud, render the contract voidable;
- (b) where a contract of group insurance, including renewals thereof, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by section 308 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

(2) **Exception.**—Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals thereof, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim.

310. Application of incontestability to reinstatement.—Sections 308 and 309 apply with necessary modifications to a failure at the time of reinstatement of a contract to disclose or a misrepresentation at that time, and the period of two years to which reference is made in section 309 commences to run in respect of a reinstatement from the date of reinstatement.

311. Pre-existing conditions.—Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

- (a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals thereof, has been in force continuously for two years immediately prior to the date of loss incurred or commencement of disability with respect to that person; and
- (b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract.

312. (1) Misstatement of age.—Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer then, at the option of the insurer, either,

- (a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age; or
- (b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

(2) Misstatement of age in group insurance.—In the case of a contract of group insurance, if there is a misstatement to the insurer of the age of a group person insured, or person insured, the provisions, if any, of the contract with respect to age or misstatement of age shall apply.

(3) True age governs.—Where the age of a person affects the commencement or termination of the insurance, the true age governs.

Beneficiaries

313. (1) Designation of beneficiary.—Unless otherwise provided in the policy, an insured may in a contract or by a declaration designate the insured's personal representative or a beneficiary to receive insurance money payable in the event of death by accident, and may from time to time alter or revoke the designation by declaration.

(2) Designation in invalid will.—A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(3) Priorities.—A designation in a will is of no effect against a designation made later than the making of the will.

(4) Revocation.—If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(5) Idem.—If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will would have been revoked by operation of law or otherwise, the designation is thereby revoked.

314. (1) Meaning of “heirs”, etc.—A designation in favour of the “heirs”, “next-of-kin” or “estate”, or the use of words of like import in a designation shall be deemed to be a designation of the personal representative.

(2) Death of beneficiary.—Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable,

- (a) to the surviving beneficiary; or

- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his or her personal representative.

(3) **Right to sue.**—A beneficiary designated under section 313 may upon the death by accident of the person insured or group person insured enforce for his own benefit, and a trustee appointed pursuant to section 315 may enforce as trustee, the payment of insurance money payable to him, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or his personal representative.

315. Trustee for beneficiary.—An insured may in a contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration.

316. (1) Documents affecting title.—Until an insurer receives at its head or principal office in Canada an instrument or an order of any court of competent jurisdiction affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

(2) **Saving.**—Subsection (1) does not affect the rights or interests of any person other than the insurer.

(3) **Interest of assignee.**—Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada the assignee has priority of interest as against,

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary.

(4) **Assignee deemed to be insured.**—Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given by the contract and by this Part to the insured, and shall be deemed to be the insured.

(5) **Prohibition against assignment.**—A provision in a contract to the effect that the rights or interests of the insured, or in the case of a contract of group insurance the group person insured, are not assignable is valid.

317. (1) Insurance money free from creditors.—Where a beneficiary is designated, any insurance money payable to the beneficiary is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) **Contract exempt from seizure.**—While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the

insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure.

318. Group person insured enforcing rights.—A group person insured may, in his or her own name, enforce a right given by a contract to him or her, or to a person insured thereunder as a person dependent upon or related to him or her, subject to any defence available to the insurer against him or her or such person insured or against the insured.

319. Simultaneous deaths.—Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 314(2) as if the beneficiary had predeceased the person insured or group person insured.

320. (1) Payment into court.—Where the insurer admits liability for the insurance money or any part thereof and it appears to the insurer that,

- (a) there are adverse claimants; or
- (b) the whereabouts of the person entitled is unknown; or
- (c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,

the insurer may apply without notice to the court for an order for payment of money into court, and the court may upon such notice, if any, as it deems necessary, make an order accordingly.

(2) Costs of proceedings.—The court may fix without taxation the costs incurred upon or in connection with any application or order made under subsection (1), and may order the costs to be paid out of the insurance money or by the insurer or otherwise as it considers just.

(3) Discharge of insurer.—A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment.

321. (1) Where beneficiary a minor.—Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into court to the credit of the minor.

(2) Costs.—The insurer may retain, out of the insurance money for costs incurred upon payment into court under subsection (1), the sum of \$10 where the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

(3) Procedure.—No order is necessary for payment into court under subsection (1), but the account or other proper officer shall receive the money upon the insurer filing

with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Children's Lawyer and deliver to him or her a copy of the affidavit. S.O. 1994, c. 27, s. 43(2).

322. Beneficiary under disability.—Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payments to the representative and any such payment discharges the insurer to the extent of the amount paid.

323. Payments not exceeding \$2,000.—Notwithstanding that insurance money is payable to a person, the insurer may if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding \$2,000 to,

- (a) a relative by blood or connection by marriage of a person insured or the group person insured; or
- (b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation thereto,

and any such payment discharges the insurer to the extent of the amount paid.

324. (1) Place of payment.—Subject to subsection (2), insurance money is payable in Ontario.

(2) Exception for group insurance.—In the case of a contract of group insurance, money is payable in the province or territory of Canada in which the group person insured was resident at the time he became insured.

(3) Dollars.—Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

(4) Payment outside Ontario.—Where a person entitled to receive insurance money is not domiciled in Ontario, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on his behalf by the law of the domicile of the payee and any such payment discharges the insurer to the extent of the amount paid.

(5) Payment to personal representative.—Where insurance money is by the contract payable to a person who has died or to his or her personal representative and such deceased person was not at the date of his death domiciled in Ontario, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his domicile, and any such payment discharges the insurer to the extent of the amount paid.

325. Action in Ontario.—Regardless of the place where a contract was made, a claimant who is a resident of Ontario may bring an action in Ontario if the insurer was

authorized to transact insurance in Ontario at the time the contract was made or at the time the action is brought.

326. Insurer giving information.—An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

327. Undue prominence.—The insurer shall not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

328. Relief from forfeiture.—Where there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person insured or claimant with respect to the loss insured against and a consequent forfeiture or avoidance of the insurance in whole or in part, and any court before which a question relating thereto is tried deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it deems just.

329. Presumption against agency.—No officer, agent, employee or servant of the insurer, and no person soliciting insurance, whether or not he is an agent of the insurer shall, to the prejudice of the insured, person insured or group person insured, be deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract.

PART VIII

LIVESTOCK INSURANCE

330. Application of Part.—This Part applies to livestock insurance and to any insurer carrying on the business of livestock insurance in Ontario.

331. Property that may be insured.—Every insurer licensed for the transaction of livestock insurance may, within the limits and subject to the conditions prescribed by the licence, insure against loss of livestock, by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion of any enemy or by insurrection.

332. Application of provisions as to fire insurance.—The following provisions of Part IV apply to livestock insurance contracts:

1. The provisions as to the form and contents of the policy.
2. The provisions as to the conditions, including the statutory conditions, except where inapplicable to the nature of the risks.
3. The provisions relating to premium notes and assessments, other than sections 155, 156 and 166, where the insurance is on the premium note plan.

333. (1) Term of contract.—Contracts of insurance shall not in any case exceed the term of two years.

(2) Renewing policies.—A contract made for one year or any shorter period may be renewed from time to time at the discretion of the directors by renewal receipt instead of by policy, on the assured paying the required premium or giving his premium note, and all payments or renewal by cash or premium notes must be made at or before the end of the period for which the policy was granted or renewed, otherwise the policy is void.

(3) Premium note.—No premium note taken under a contract of insurance shall exceed 40 per cent or be less than 10 per cent per annum of the sum insured, and no renewal receipt shall extend the contract beyond two years from the date of the policy.

PART IX

WEATHER INSURANCE

334. Application of Part.—This Part applies to weather insurance and to any insurer carrying on the business of weather insurance in Ontario, but does not apply to weather insurance provided by an endorsement to a contract of fire insurance.

335. What may be insured.—Every insurer licensed for the transaction of weather insurance may, within the limit and subject to the conditions prescribed by the licence, insure against such atmosphere disturbances, discharges or conditions as the contract of insurance specifies.

336. (1) Application of certain provisions as to fire insurance.—The following provisions of Part IV apply to weather insurance contracts:

1. The provisions as to the form and contents of policy.
2. The provisions as to the conditions, including the statutory conditions, except where inapplicable to the nature of the risk.
3. The provisions relating to premium notes and assessments, other than sections 155, 156 and 166, where the insurance is on the premium note plan.
4. The provisions relating to a refund from surplus.

(2) Additional conditions.—The following additional conditions form part of every weather insurance contract:

1. The insurance may be terminated by the insurer by giving seven days notice to that effect.
2. The insurer is not liable for loss or damage occurring to buildings or structures or to their respective contents where the buildings or structures have been weakened by subsequent alterations unless permission to make such alterations has been previously granted in writing signed by a duly authorized agent of the insurer.

337. Term of contract.—A contract of weather insurance shall not in any case exceed the term of three years.

338. Premium note.—On every premium note taken by the insurer there shall be payable at the commencement of the three-year term of insurance a basic cash payment amounting to at least three-fifths of 1 per cent of the sum insured or proportionately where the cash payment is paid in advance for a shorter term, and the premium note shall, as to the balance thereof, be subject to assessment by the directors, and when the amount of insurance in force exceeds \$10,000,000 and the total assets of the company, including premium note residue, do not fall below 2 per cent of the total amount at risk, the basic cash payment may be reduced to three-eighths of 1 per cent of the sum insured for three years or proportionately for a shorter term, and when the amount of insurance in force exceeds \$25,000,000 and the total assets of the company, including premium note residue, do not fall below 1½ per cent of the total amount at risk, the Superintendent may authorize a further reduction of the basic cash payment for three years, which shall not be less than three-tenths of 1 per cent of the sum insured or proportionately for a shorter term.

PART X

FRATERNAL SOCIETIES

339. Definitions.—In this Part,

“**rates of contribution**”, “rates of contribution” means the regular net premiums, dues, rates or contributions receivable from the members for the purpose of the payment at maturity of the society’s certificates or contracts of insurance;

“**society**”, “society” means a fraternal society.

340. (1) Application of Part.—Subject to subsection (2), this Part applies to all fraternal societies carrying on the business of insurance in Ontario.

(2) Application of ss. 356-360 to certain societies.—Sections 356 to 360 do not apply to a fraternal society whose membership is limited by its constitution or laws to municipal or government employees.

341. What fraternal societies required to be licensed.—Fraternal societies required to be licensed under this Act include,

- (a) a company, society, association or organization incorporated before the 10th day of March, 1890, under chapter 172 of The Revised Statutes of Ontario, 1887, or a predecessor thereof;
- (b) a society incorporated under chapter 183 of The Revised Statutes of Ontario, 1914, or a predecessor thereof, that undertakes insurance against death;
- (c) an association of the civil servants or employees of Canada incorporated by or under the authority of an Act of the Parliament of Canada;

- (d) a fraternal society incorporated after the 1st day of January, 1924, under the *Corporations Act* or a predecessor thereof.

342. Cases in which such societies not to be licensed.—No fraternal society shall be licensed,

- (a) if it undertakes insurance contracts with persons other than its own members; or
- (b) except as provided in section 365, if it insures or indemnifies against contingencies other than sickness, accident, disability, death or funeral expenses; or
- (c) if it has upon its books fewer than seventy-five members in good standing; or
- (d) if it is in effect the property of its officers or collectors, or of any other person for his own benefit, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured; or
- (e) in the case of a fraternal society that has not been authorized to carry on business in Ontario before the 1st day of January, 1925, unless the society files with the Superintendent a declaration of its actuary in the form and to the effect required by subsection 355(2).

343. Societies not deemed to be fraternal societies.—The following shall be deemed not to be fraternal societies within the meaning of this Part and shall not be required or entitled to be licensed as such:

1. Societies known as mutual benefit societies as defined in section 1 and subject to Part XI, including,
 - i. a society that was incorporated under sections 36 to 41 of chapter 183 of the Revised Statutes of Ontario, 1914, or any Act for which that Act was substituted and that does not undertake contracts of life insurance, and
 - ii. a trade union in Ontario that under the authority of its incorporating Act or charter has an insurance or benefit fund for the benefit of its own members exclusively, and
 - iii. a mutual benefit society incorporated after the 1st day of January, 1925, under the *Corporations Act* or a predecessor thereof.
2. Pension fund and employees' benefit societies incorporated under the *Corporations Act* or a predecessor thereof.
3. A corporation not otherwise provided for in this Act that has by or under the authority of an Act of the Parliament of Canada created a fund for paying a gratuity on the happening of death, sickness, infirmity, casualty, accident, disability or any change of physical or mental condition.
4. A corporation not otherwise provided for in this Act that has by or under the authority of an Act of the Parliament of Canada an insurance and provident

society or association, or an insurance or guarantee fund in connection with the corporation.

5. A corporation that undertakes or offers to undertake contracts of insurance prohibited by section 295.
6. A corporation in which the insurance fund is used for the purposes of a mercantile or business enterprise, or for mercantile profit, or a society formed on the lodge system, whose insurance fund is held other than as a trust fund for the members insured.
7. A society in which the persons insured do not exercise, either directly or through representatives elected for a term not exceeding four years, effective control over the insurance fund of the society, or in which the officers or other persons having the disposition, control or possession of the insurance fund are elected or appointed for a longer period than four years.
8. Any corporation that undertakes contracts of insurance but is not formed exclusively for that purpose and that does not for the purposes of such contracts keep distinct and separate funds, securities, books and vouchers.

344. Guarantee and endowment insurance.—Clause 242(b) does not apply to contracts guaranteeing the fidelity of officers, servants or employees of the branches or subdivisions of a corporation.

345. (1) Central body for Ontario or representative may be dealt with.—Where two or more lodges or branches of a society, though separately incorporated, are under the financial or administrative control of a central governing body in Ontario or a duly authorized provincial representative of the society, such governing body, if incorporated, or such provincial representative of the society may, if the Superintendent thinks proper, be dealt with as the society.

(2) When central body for Ontario incorporated.—In the case of a fraternal society incorporated elsewhere than in Ontario, the central governing or controlling body in Ontario, if incorporated by virtue of the law of Ontario, may, if the Superintendent thinks proper, be dealt with as the society.

346. (1) By-laws and rules to be filed with Superintendent.—Every fraternal society shall, with its application for licence, file in the office of the Superintendent duly certified copies in duplicate of those articles or provisions of the subsisting constitution, by-laws or rules that contain material terms not set out in the instrument of contract adopted by the society, and shall, from time to time, file in the office of the Superintendent duly certified copies in duplicate of every amendment, revision or consolidation of such articles or provisions of the constitution, by-laws and rules within thirty days after the passing or adoption of the amendment, revision or consolidation.

(2) Superintendent may take exception within 30 days.—The Superintendent may, within thirty days after the date of such filing, take exception to any amendment or revision or any part thereof if, in his or her opinion, the amendment or revision or any part thereof is contrary to this Act, or is actuarially unsound, or is oppressive to or

discriminatory in application against any class of the membership of the society, or is unjust or unreasonable.

(3) **Notice.**—If the Superintendent takes exception to any such amendment or revision or any part thereof in accordance with this section, the Superintendent shall forthwith notify the society thereof in writing and the reasons therefor.

(4) **Certified by-laws and rules.**—The original constitution, by-laws and rules and any amendment, revision or consolidation thereof, to which the Superintendent does not take exception, or that, after the Superintendent has taken exception to an amendment or revision or any part thereof, have been further amended in accordance with the Superintendent's direction, or that, after the Superintendent has taken exception to an amendment or revision or any part thereof, has been approved and confirmed on appeal from the Superintendent as herein provided, shall be certified by the Superintendent to be duly passed by the society as filed.

(5) **By-laws and rules as filed to be binding on society.**—The constitution, by-laws or rules and any amendment, revision or consolidation thereof so certified shall, notwithstanding the declaration or other instrument filed under any general or special Act, be deemed to be the rules in force on and after the date of the certificate until a subsequent amendment, revision or consolidation is in like manner certified and filed and so from time to time, and are binding and obligatory upon all members of the society and upon all their beneficiaries and legal representatives and upon everyone entitled to any benefit under any certificate of the society, but the failure of the Superintendent to take exception to any rule of the society or amendment or revision thereof and his certifying and filing of the same does not make valid any provision of such rule that is inconsistent with this Act.

(6) **Where section does not apply.**—This section does not apply to the constitution, by-laws and rules of a society or any amendment, revision or consolidation thereof passed and adopted by the society before the 1st day of January, 1925.

347. Where rules must be amended.—Where because of a provision in any of its rules a society otherwise entitled to be licensed ought not, in the opinion of the Superintendent, to be licensed, it is not entitled to a licence until it has repealed or amended such rules in accordance with the direction of the Superintendent.

348. (1) Rules deliverable on demand.—A copy of all rules of a society relating to its insurance contracts and to the management and application of its insurance funds shall be delivered by the society to any person requiring it on payment of 25 cents.

(2) **Fraudulent delivery.**—An officer or agent of a society who, with intent to mislead or defraud, gives a person a copy of rules other than the rules then in force on the pretence that they are the rules then in force is guilty of an offence.

349. (1) Substitution of instalments for gross payment.—Where by the constitution and rules of a society provision is made for the payment of an ascertained or ascertainable sum to a member of the society in the event of his becoming totally disabled, or of his reaching a stated age, or upon the concurrence of both events, whether such

provision is combined with other life insurance or not, the society may, with the approval of the Superintendent, so amend its constitution and rules as to provide for the payment of such sum in equal consecutive annual instalments without interest, the payment of such instalments to be completed within a period not exceeding ten years from the happening of the event, but no person who has become entitled, or may become so entitled as aforesaid, to any such annual instalment shall receive payment of it unless at the maturity of each instalment such person has continued to be a member of the society and has paid all dues and assessments adopted by the society.

(2) **Amendments of rules to that intent validated.**—All such amendments that have heretofore been or that are hereafter made by a society under its constitution and rules are valid and binding upon all its members and upon all their beneficiaries and personal representatives and upon everyone entitled, notwithstanding anything to the contrary in the instrument of incorporation of the society or the previous provisions of its constitution and rules.

(3) **When insured dies before receiving all instalments.**—If a member of the society dies after becoming totally disabled or reaching the stated age but before the payment of all instalments, the instalments unpaid form part of the insurance money or benefits payable upon the death of such member.

(4) **Unmatured policies as liabilities.**—No unmatured policy or contract of insurance creates any claim or liability against the society while a going society or against the estate of the society in a winding up or liquidation, but in a winding up or liquidation the insured or beneficiary for value under such unmatured policy or contract is entitled to share in the surplus assets of the society.

350. (1) Limitation of member's liability in fraternal society.—The liabilities of a member under his contract at any date is limited to the assessments, fees and dues that become payable within the preceding twelve months and of which at such date notice had been given in accordance with the constitution and rules of the society.

(2) **Withdrawal of member.**—A member may at any time withdraw from the society by delivering or sending by registered mail to the society notice in writing of his intention to withdraw and paying or tendering the assessments, fees and dues mentioned in subsection (1).

(3) **Release from liability.**—After such withdrawal, the member becomes thereby released from all further liability under his contract.

(4) **Exception.**—This section is subject to any rules to the contrary certified by and filed with the Superintendent under this Part.

351. (1) Notice before forfeiture of benefit.—No forfeiture or suspension shall be incurred by reason of any default in paying any contribution or assessment, except such as are payable in fixed sums and at fixed dates, until after notice to the member stating the amount due by him, and that in case of default of payment within a reasonable time, not less than thirty days, to the proper officer, who shall be named in such notice,

his interest or benefit will be forfeited or suspended, and default has been made by him in paying his contributions or assessment in accordance with such notice.

(2) **Interpretation.**—In subsection (1), “fixed dates” includes any numbered day, or any Monday, Tuesday, or as the case may be, numbered, alternate or recurring, of a stated month or months.

(3) **Saving rights to reinstatement.**—Where under the constitution or rules or by-laws of the society a defaulting member is entitled to be reinstated on payment of arrears after a stated number of days default, this section does not prejudice the rights of such member.

352. (1) Conditions of forfeiture restricted.—Where it is stipulated that the benefit of the contract will be suspended or reduced or forfeited for any other reason than for non-payment of money, such condition is not valid unless it is held to be just and reasonable under the circumstances of the case.

(2) **Condition as to abstinence.**—In any contract of which total abstinence from intoxicating liquors is made an express condition, such condition shall be deemed to be just and reasonable.

353. (1) How notice may be given to members.—Subject to subsection (2), a notice required to be given to a member for any purpose of this Act or of the rules of the society may be effectually given if written or printed notice is delivered, or is sent by registered mail to the member, or is left at his last known place of abode or of business or by publication in the official paper of the society.

(2) **Notice of reduction of benefit, etc.**—A notice of the reduction of any benefit payable under a contract of insurance or of the increase of the premium payable thereunder shall be sent by registered mail to the member at his last known place of abode or of business.

354. Head offices of Ontario societies.—A society incorporated under any Act of the Legislature is not entitled to a licence unless its head office is located and maintained in Ontario.

355. (1) Valuation report.—Subject to subsection (4), in addition to the annual statement required to be filed under this Act, each society shall file with the Superintendent, not later than the 1st day of May in each year, a valuation of its certificates or contracts of insurance in force at the last preceding 31st day of December, which valuation shall have regard to the prospective liabilities of the society under its certificates or contracts of insurance and to the rates of contribution to be thereafter received from its members on such certificates according to the rates in force at the date of valuation and shall be made and certified by an actuary appointed by the society and shall include a valuation balance sheet in such form and detail as the Superintendent from time to time may require.

(2) **Declaration of actuary.**—Where in the opinion of the actuary appointed by the society the valuation balance sheet shows that the society is in a position to provide for

the payment of its contracts of insurance as they mature without deduction or abatement and without increase in its existing rates of contribution, the society shall file with the Superintendent a declaration of the actuary to that effect.

(3) **Distribution of summary and statement to members.**—A summary of the valuation certified by the actuary and a statement as to the financial condition of the society disclosed by such valuation shall be mailed to each insured member not later than the 1st day of June in each year or in lieu thereof such certified summary of the valuation and statement of the actuary may be published in the society's official paper and a copy mailed to each insured member.

(4) **Exception as to certain fraternal societies.**—A fraternal society whose membership is limited by its constitution or laws to municipal or government employees shall not be required to file the valuation mentioned in subsection (1) or to publish the summary thereof mentioned in subsection (3) unless and until required by the Superintendent in writing so to do.

356. (1) Where assets of society insufficient.—If it appears to the Superintendent from the statement and reports filed with him or from an examination or valuation made under this Act that the assets of a licensed fraternal society applicable to the payment of its insurance contracts are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of contribution, he shall make a special report to the Commissioner as to the financial condition of the society.

(2) **Request by Commissioner.**—If, after considering the report, the Commissioner agrees with the Superintendent, the Commissioner shall require the society to make, within the specified time but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise as will enable the society to provide for the payment of its contracts of insurance at maturity.

(3) **Society to act upon request.**—On receipt of such request, the society shall take the steps prescribed by its laws or constitution for putting into effect such changes as may be approved by the actuary appointed by the society for the purpose aforesaid.

(4) **Special meeting to consider request of Commissioner.**—Where in the opinion of the governing executive authority of the society a special meeting of the society is desirable for the purpose of considering the request of the Commissioner, the authority may call a special meeting of the supreme legislative body of the society upon such notice as the authority considers reasonable and as the Superintendent may approve, and such meeting so called shall be deemed to have been regularly constituted notwithstanding anything in its constitution and laws.

357. Reduction of benefits, or increase of rates.—A fraternal society incorporated under the laws of Ontario may by amendment of its constitution and laws reduce the benefits payable under its contracts of insurance or some of them, or increase the rates of contribution payable by its members as a whole or some class or classes thereof, or make such other changes as are necessary to comply with the aforesaid request of the

Commissioner and such amendments when adopted by a majority of the votes duly cast by the members of the supreme legislative body of the society at a regular or special meeting of the supreme legislative body of the society duly called are binding upon the members of the society and upon their beneficiaries or legal representatives and upon all persons deriving legal rights from any member or beneficiary, notwithstanding anything in its constitution and laws before such amendments or in its Act or instrument of incorporation, or in any contract, policy or certificate of insurance heretofore or hereafter issued by the society.

358. (1) Default of society in complying with request of Commissioner.—Where a society does not within the time allowed comply with the request of the Commissioner as prescribed by subsection 309(2), the Superintendent shall report the default to the Commissioner, who shall thereupon appoint a readjustment committee of three persons of whom at least one must be an actuary who shall at as early a date as practicable investigate the assets, liabilities, rates of contribution and plans of insurance of the society and prepare a report containing such amendments to the society's constitution and laws reducing the benefits payable under its contracts of insurance or some of them or increasing the rates of contribution payable by its members as a whole or some class or classes thereof, or such other amendments as the readjustment committee considers necessary in order to provide for the payment of all the contracts of insurance of the society as they mature in accordance with the amendments.

(2) Amendments in report of committee to be part of society's constitution.—The readjustment committee shall file such report in the office of the Superintendent and deliver to the society a certified copy thereof and, immediately upon such report being filed with the Superintendent, the amendments contained therein become part of the constitution and laws of the society and are valid and binding upon all its members and upon their beneficiaries or personal representatives and upon all persons deriving legal rights from any member or beneficiary notwithstanding anything in its constitution and laws before such amendments or in its Act or instrument of incorporation or in any policy or certificate of insurance issued by it.

(3) Date to be fixed in report.—The readjustment committee shall in the amendments fix a date not more than six months after the date of filing of the report when the reduction of benefits or increase in the rate of contribution provided for by such amendments will be in full force and effect.

(4) Expenses.—The society shall bear the expense of the investigation and report and shall furnish the readjustment committee with required information.

359. (1) Where society unable to furnish declaration of actuary.—Where a society that is unable to furnish the declaration of an actuary prescribed in subsection 308(2) has heretofore adopted or hereafter adopts new rates of contribution that in the opinion of the actuary appointed by the society, filed with the Superintendent, make reasonable provision for the payment in full at maturity of the contracts of insurance issued to its members who have entered or enter the society upon such new rates of contribution the society shall, after the payment of the matured contracts of such members,

create and from time to time maintain out of the rates of contributions of such members and interest accretions thereto a reserve fund not less than the amount that, with the rates of contributions to be collected from such members, is, in the opinion of the actuary, required to pay in full such contracts of insurance as they mature, and such fund shall be a separate fund of the society and is not liable for payment of the debts and obligations of the society under its contracts of insurance with those members who have not contributed to the funds of the society under such new rates of contribution or under subsection (2).

(2) **New certificates may be issued.**—The society may provide in its constitution and laws for the issue of new certificates to members admitted to the society before the establishment of such fund upon such terms and conditions as will, in the opinion of the actuary appointed by the society certified in writing to the Superintendent, enable the society to pay in full the contracts of insurance issued to such members as they mature, and subsection (1) applies to such new certificates.

(3) **Annual valuation of actuary, what to show.**—The annual valuation of the actuary of the society maintaining a separate fund as hereinbefore prescribed shall show clearly and separately and in such detail as the Superintendent may require the financial position of the society in respect of the certificates of insurance included, and those not included, within the scope of the separate fund.

(4) **Merger of funds.**—When a society that has been maintaining a separate fund for new members in accordance with this section files with the Superintendent, be merged with the other funds of the society of a kindred nature.

(5) **Maintenance of common expense fund.**—Nothing herein prevents a society that maintains a separate fund as hereinbefore described from maintaining a common expense fund.

360. Limitation of contribution.—A society that files with the Superintendent the declaration prescribed by subsection 355(2) or a society that maintains a separate fund for its contracts of insurance as prescribed by section 359 may provide in its constitution and laws for the issue of contracts of life insurance wherein the regular rates of contributions payable thereunder may be limited to a period of twenty or more years, if such rates of contribution have been approved by an actuary and if such certificates of insurance are subject to subsection 359(1), but such limitation of payments does not affect the right of the society to make an assessment or assessments in respect of such certificates in accordance with the constitution and laws of the society either during or after the period of such limited payments.

361. Epidemic or unforeseen contingency.—In the event of an epidemic or other unforeseen contingency impairing the funds of a society, the governing executive authority of the society may impose a special assessment or special assessments upon the members of the society or upon such class or classes thereof and with such incidence as in the opinion of the governing executive authority is necessary and equitable, and such special assessment or assessments are binding on the members of the society notwith-

standing anything to the contrary in its Act or instrument or incorporation or its constitution and laws, or in any certificate of insurance heretofore or hereafter issued by the society.

362. General or expense fund.—The governing executive authority of a society may make such additional levies from time to time upon all members of the society as are necessary, in the opinion of the governing executive authority, to properly carry on the work of the society and prevent any deficit in its general or expense fund, and such additional levies are binding on its members notwithstanding anything to the contrary in its Act or instrument of incorporation, or in its constitution or laws, or in any certificate of insurance heretofore or hereafter issued by it.

363. Application of surplus.—A society whose valuation balance sheet prescribed by subsection 355(1) shows a surplus of assets of more than 5 per cent over and above all its liabilities may apply the surplus or a part thereof, by way of transfer from the mortuary to the expense fund, by waiver of premium, by bonus additions or otherwise, in any manner that may be approved by the actuary appointed by the society, if a certificate of the actuary is filed with the Superintendent at least thirty days before any application or transfer is made certifying that the proposed application or transfer is authorized by the constitution and laws of the society, that it is fair and reasonable and in the best interests of the society, and that it will not prejudice the ability of the society to pay its contracts of insurance as they mature.

364. Certificate approving rates to be filed.—Every licensed fraternal society shall, before putting into effect any new or additional benefits or any new scale of rates of contribution under certificates of insurance, file with the Superintendent a certificate of an actuary approving of such benefits or rates of contribution.

365. Insurance and annuities in fraternal societies.—A fraternal society licensed under this Act that has filed with the Superintendent for at least three successive years a declaration of an actuary as required by subsection 355(2), if duly authorized by a by-law of the society passed on the recommendation of the actuary, may issue to its members,

- (a) endowment or term insurance contracts;
- (b) insurance contracts under which the sum or sums payable on the death of any one person, other than a double indemnity accident benefit, is in excess of \$10,000; and
- (c) annuities of all kinds.

366. Recommendation of actuary.—Every by-law referred to in section 365 shall set forth the rates of benefit and indemnity and the amounts of insurance or annuity that may be issued, but such by-law is without effect unless the actuary of the society certifies to the reasonableness of the rates of benefit and indemnity and of the amounts of insurance or annuity having regard to,

- (a) all the conditions and circumstances of their issuance;

- (b) the sufficiency of the rates of contribution therefor; and
- (c) the reasonableness of the loan values, cash values and other equities that may be provided,

and recommends the passing of such by-law.

367. Societies composed of municipal and government employees.—Notwithstanding sections 365 and 366, any society whose membership is limited by its constitution or laws to municipal or government employees may undertake annuities on lives in the nature of old age pensions.

368. Surrender values and other equities.—A fraternal society licensed under this Act that files with the Superintendent a declaration of an actuary as provided by subsection 355(2) may, if its constitution so provides and subject thereto, grant such surrender values or other equities as are approved by its actuary and authorized by its constitution.

369. (1) Report by Superintendent where assets of certain societies insufficient.—If it appears to the Superintendent from the statements and reports filed with him or her or from an examination or valuation made under this Act that the assets of a licensed fraternal society whose membership is limited by its constitution or laws to municipal or government employees applicable to the payment of its insurance contracts are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of contribution, he shall make a special report to the Commissioner and to the head or responsible officer of the municipality or government of which the members of the society are employees as to the financial condition of the society.

(2) Responsibility of Superintendent.—The Superintendent shall not make any order or assume any responsibility for the readjustment of rates and benefits of the society necessary to enable it to provide for the payment of the contracts of insurance of the society at maturity, but a synopsis of his or her special report shall be reported in his annual report.

370. Exception as to annual statement.—Where the constitution, by-laws or rules of a fraternal society provide for a fiscal year other than the calendar year, the Superintendent may, in his or her discretion, accept statements from it showing its affairs as at the end of the fiscal year instead of as at the end of the calendar year.

PART XI

MUTUAL BENEFIT SOCIETIES

371. What societies required to be licensed.—Mutual benefit societies required to be licensed under this Act include,

- (a) a society incorporated under sections 36 to 41 of chapter 183 of the Revised

Statutes of Ontario, 1914, or a predecessor thereof that does not undertake contracts of life insurance;

- (b) a mutual benefit society incorporated after the 1st day of January, 1925, under the *Corporations Act* or a predecessor thereof.

372. (1) What societies may not be licensed.—Subject to subsection (2), no mutual benefit society shall be licensed or have its licence renewed,

- (a) if it has upon its books less than seventy-five members in good standing;
- (b) if it insures or indemnifies against contingencies other than sickness, disability or funeral expenses;
- (c) if it contracts for sick benefits for an amount in excess of \$30 per week or for a funeral benefit in excess of \$800;
- (d) if it undertakes insurance contracts with persons other than its own members;
- (e) if it is in effect the property of its officers or collectors, or of any other person for his own benefit, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured;
- (f) if it has charge of or manages or distributes charity or gratuities or donations only.

(2) **Exception.**—The Commissioner may, in his or her discretion, renew the licence of any mutual benefit society notwithstanding that it has upon its books, at the time of application for the renewal, less than seventy-five members in good standing.

373. Application of certain sections.—Sections 345, 346 and 347 apply with necessary modifications to societies licensed under this Part.

374. Exception as to annual statement.—Where the constitution, by-laws or rules of a mutual benefit society that grants benefits solely through subordinate lodges or branches provide for a fiscal year other than the calendar year, the Superintendent may, in his or her discretion, accept statements from it showing its affairs as at the end of its fiscal year instead of as at the end of the calendar year.

PART XII

PENSION FUND ASSOCIATIONS

375. (1) Application of Part.—This Part applies to all applications for licence of pension fund associations and to such pension fund associations when licensed under this Act.

(2) **Application of certain sections.**—Subject to the express provisions of this Part, the provisions of this Act applicable to insurers licensed to undertake contracts of life

insurance in Ontario, except sections 66 to 99, section 108 and Part V, apply to all pension fund associations.

376. Valuation to be filed.—In addition to the annual statements required to be filed by every licensed insurer on or before the last day of February in each year, each pension fund association shall file with the Superintendent, in such form and at such times as he may require, a valuation of its certificates or contracts of insurance, which valuation shall have regard to the prospective liabilities of the pension fund association under its certificates or contracts of insurance, and to the rates of contribution to be thereafter received from its members on such certificates according to the rates of contribution in force at the date of valuation, and shall be made and certified by an actuary appointed by the pension fund association and approved by the Superintendent, and shall include a valuation balance sheet in such form and detail and according to such standards of valuation, having regard to the table of mortality and the rate of interest to be employed, as the Superintendent from time to time may prescribe.

PART XIII

RECIPROCAL OR INTER-INSURANCE EXCHANGES

377. Definitions.—In this Part, unless the context otherwise requires,

“**attorney**”.—“attorney” means a person authorized to act for subscribers as provided in section 380;

“**subscribers**”.—“subscribers” means the persons exchanging with each other reciprocal contracts of indemnity or inter-insurance as provided in section 378.

378. (1) Authority for exchange of reciprocal contracts of insurance.—It is lawful for a person to exchange with other persons in Ontario and elsewhere reciprocal contracts of indemnity or inter-insurance for any class of insurance for which an insurance company may be licensed under this Act, except life insurance, accident insurance, sickness insurance and surety insurance.

(2) **Definition.**—In subsection (1), “surety insurance” means insurance, other than credit insurance or insurance against loss caused by default on the part of a borrower under a loan secured by a mortgage upon real property, a hypothec upon immovable property or an interest in real or immovable property, whereby an insurer undertakes to guarantee,

- (a) the due performance of a contract or undertaking; or
- (b) the payment of a penalty or indemnity for any default. S.O. 1993, c. 10, s. 36(1), (2).

379. Subscriber not to be deemed an insurer.—No person shall be deemed to be an insurer within the meaning of this Act by reason of exchanging with other persons reciprocal contracts of indemnity or inter-insurance under this Act.

380. (1) Execution of contract.—Reciprocal contracts of indemnity or inter-insurance may be executed on behalf of subscribers by any other person acting as attorney under a power of attorney, a copy of which has been duly filed as hereinafter provided.

(2) Who may maintain action in contract.—Notwithstanding any condition or stipulation of any such power of attorney or of any such contract of indemnity or inter-insurance, any action or proceeding in respect of any such contract may be maintained in any court of competent jurisdiction in Ontario.

381. Declaration by members of exchanges.—The persons constituting the exchange shall, through their attorney, file with the Superintendent a declaration verified by oath, setting forth,

- (a) the name of the attorney and the name or designation under which such contracts are issued, which name or designation must not be so similar to any other name or designation previously adopted by any exchange or by any licensed insurer as in the opinion of the Superintendent to be likely to result in confusion or deception;
- (b) the classes of insurance to be effected or exchanged under such contracts;
- (c) a copy of the form of the contract, agreement or policy under or by which such regional contracts of indemnity or inter-insurance are to be effected or exchanged;
- (d) a copy of the form of power of attorney under which such contracts are to be effected or exchanged;
- (e) the location of the office from which such contracts are to be issued;
- (f) a financial statement in the form prescribed by the Superintendent;
- (g) evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange;
- (h) evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney.

382. (1) Form of licence.—Upon an exchange complying with this Part, the Superintendent may issue a licence.

(2) Deposit.—Notwithstanding anything in this Act, the Superintendent may, with the approval of the Minister, require an exchange, as a condition of the issue or renewal of its licence, to deposit approved securities with the Minister in such amount and upon such terms and conditions as the Superintendent considers proper.

383. Evidence required before issue of licence for fire insurance.—A licence shall not be issued to an exchange to effect or exchange contracts of indemnity or inter-insurance,

- (a) against loss by fire, until evidence satisfactory to the Superintendent has been filed with him that applications have been made for indemnity upon at least seventy-five separate risks in Ontario or elsewhere aggregating not less than \$1,500,000 as represented by executed contracts or applications to become concurrently effective;
- (b) automobile insurance.—in respect of automobiles, until evidence satisfactory to the Superintendent has been filed with him that applications have been made for indemnity upon at least 500 automobiles as represented by executed contracts or applications to become concurrently effective, and that arrangements satisfactory to him are in effect for the reinsurance of all liabilities in excess of such limits as he may prescribe.

384. Service of process.—Where the office from which such contracts are to be issued is not in Ontario, service upon the Superintendent of notice or process in any action or proceeding in Ontario in respect of a contract of indemnity or inter-insurance effected by the exchange shall be deemed service upon the subscribers who are members of the exchange at the time of the service.

385. Statement of maximum indemnity.—There shall be filed with the Superintendent by the attorney, as often as the Superintendent may require, a statement of the attorney under oath showing, in the case of fire insurance, the maximum amount of indemnity upon any single risk and a statement of the attorney verified by oath to the effect that he has examined the commercial rating of the subscribers of the exchange as shown by the reference book of a commercial agency, having at least 500 subscribers, and that from such examination or other information in his possession it appears that no subscriber has assumed on any single fire insurance risk an amount greater than 10 per cent of the net worth of such subscriber.

386. (1) Amount of reserve.—There shall at all times be maintained with such attorney, as a reserve fund, a sum in capital or approved securities equal to 50 per cent of the annual deposits or advance premiums collected or credited to the accounts of subscribers on contracts in force having one year or less to run, and *pro rata* on those for longer periods.

(2) **Guarantee fund.**—Except as hereinafter provided, there shall also be maintained as a guarantee fund or surplus an additional sum, in excess of all liabilities, in cash or approved securities amounting to not less than \$50,000.

(3) **Guarantee fund of fire insurance domestic exchange.**—In the case of a fire insurance exchange whose principal office is in Ontario, the guarantee fund or surplus referred to in subsection (2) shall not be less than \$25,000.

(4) **Guarantee fund of domestic automobile insurance exchange.**—In the case of an automobile insurance exchange whose principal office is in Ontario, the guarantee fund or surplus referred to in subsection (2) shall, during the first year of operation of the exchange, be maintained at an amount not less than \$10,000, and thereafter not less than \$25,000.

(5) **Deficiency.**—If at any time the amounts on hand are less than the foregoing requirements, the subscribers or the attorney shall forthwith make up the deficiency.

(6) **Use of funds supplied to make up deficiency.**—Where funds, other than those that accrued from premiums or deposits of subscribers, are supplied to make up a deficiency as herein provided for, such funds shall be deposited and held for the benefit of subscribers under such terms and conditions as the Superintendent may require so long as a deficiency exists, and may thereafter be returned to the depositor.

(7) **Interpretation.**—In this section, “approved securities” means securities that are authorized for investment by section 387.

387. (1) Investment of surplus funds and reserve.—If the principal office of the exchange is in Ontario, the surplus insurance funds and the reserve fund of the exchange shall be invested in the class of securities authorized by Part XVII for the investment of the reserve funds of a joint stock insurance company.

(2) **Evidence as to investments.**—If the principal office of the exchange is outside Ontario, it shall be a condition precedent to the issue of a licence under this Act that evidence satisfactory to the Superintendent is filed with the Superintendent showing that the class of security in which funds of the exchange are required by law to be invested, and are in fact invested, is within the limits of investment prescribed for the investment of the reserve funds of an insurance corporation by the jurisdiction in which the office of the exchange is situate.

388. (1) Contracts for subscribers only.—No exchange shall undertake any liability on a contract of indemnity, inter-insurance or insurance except on behalf of a subscriber.

(2) **Reinsurance in another exchange.**—No attorney or exchange shall effect reinsurance of any risks undertaken by the exchange in any licensed reciprocal or inter-insurance exchange unless such exchange operates on the same underwriting standards.

389. (1) Attorney not to act until licence granted.—No person shall act as attorney, or for or on behalf of an attorney, in the exchange of reciprocal contracts of indemnity or inter-insurance, or in acts or transactions in connection therewith, until a licence has been issued and is in force.

(2) **Offence.**—Every person who, in contravention of subsection (1), undertakes or effects or agrees or offers to undertake or effect an exchange of reciprocal contracts of indemnity or inter-insurance, or any act or transaction in connection therewith, is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500.

390. (1) Suspension or revocation of licence.—Where a licensed exchange or attorney contravenes any provision of this Act, the licence of the exchange may be suspended or revoked by the Minister on the report of the Superintendent after due notice and opportunity for a hearing before the Superintendent has been given to the exchange or its attorney, but the suspension or revocation does not affect the validity of any

reciprocal contracts of indemnity or inter-insurance effected prior thereto or the rights and obligations of subscribers under such contracts.

(2) **Notice.**—Notice of such suspension or revocation shall be given by the Superintendent in at least two successive issues of *The Ontario Gazette* as soon as reasonably may be after the suspension or revocation.

391. Annual tax.—The attorney for a licensed exchange shall, on or before the 1st day of March in each year, pay to the Treasurer of Ontario an annual tax in respect of all premiums or deposits collected by the exchange of an amount equal to and calculated in the same manner as under section 66 of the *Corporations Tax Act*, if such premiums or deposits had been received by a licensed insurer, and payment thereof shall accompany the annual statement filed with the Superintendent.

392. Fire insurance in unlicensed exchanges may be effected outside Ontario.—Notwithstanding anything in this Act, any person may insure against fire any property situated in Ontario in an exchange not licensed under this Act, and any property so insured or to be insured may be inspected and any loss incurred in respect thereof adjusted, if such insurance is effected outside Ontario and without any solicitation in Ontario directly or indirectly on the part of the insurer.

PART XIV

AGENTS, BROKERS AND ADJUSTERS

Licences of Insurance Agents

393. (1) Licensing agent.—The Superintendent may issue to any person who has complied with this Act a licence authorizing such person to carry on business as an insurance agent subject to this Act, to the regulations and to the terms of the licence.

(2) **Classes of licences.**—Licences so issued shall be of three classes, that is,

- (a) licences for life insurance, or life and accident insurance, or life and accident and sickness insurance; or
- (b) licences for accident and sickness insurance; or
- (c) licences for all classes of insurance other than life insurance.

(3) **Issue of licence.**—Upon written notice to the Superintendent that a licensed insurer has appointed a person to act as the insurer's agent in Ontario and upon due application of the person and payment by the person of the prescribed fee, the Superintendent shall, if satisfied that the applicant is a suitable person to receive a licence and intends to hold himself, herself or itself out publicly and carry on business in good faith as an insurance agent, issue to the applicant a licence that shall state in substance that the

holder is, during the term of the licence, authorized to carry on in Ontario the business of an insurance agent.

(4) **Notice under subs. (3).**—Notice under subsection (3) shall be given by the insurer in a form provided or approved by the Superintendent and shall be accompanied by a sworn statement by the applicant in a form provided or approved by the Superintendent.

(5) [Repealed. S.O. 1994, c. 11, s. 339(2).]

(6) **Notice of termination of agency.**—Where the agency, upon notice of which a licence is issued, is terminated, notice in writing shall forthwith be given by the insurer to the Superintendent of the termination, with the reason therefor, and thereupon the licence is automatically suspended, but it may be revived subject to the approval of the Superintendent upon filing of notice of a new agency appointment and upon payment of the prescribed fee.

(7) **Failure to give notice.**—An insurer who fails to notify the Superintendent within thirty days of the termination of an agency appointment as required by subsection (6) is guilty of an offence.

(8) **Revocation.**—A licence issued under this section may be revoked by the Superintendent if, after due investigation and a hearing, the Superintendent determines that the holder of a licence,

- (a) has contravened any provision of this Act or the regulations in his operations as an insurance agent; or
- (b) has made a material misstatement in the application for the licence; or
- (c) has been guilty of a fraudulent practice; or
- (d) has demonstrated his incompetency or untrustworthiness to transact the insurance agency business for which the licence was granted, by reasons of anything done or omitted in or about such business under the authority of the licence; or
- (e) has employed upon salary or otherwise any person whose application for licence as an insurance agent has been refused or whose licence has been revoked or suspended under this Part without having first obtained the written approval of the Superintendent.

(9) **Advisory board to hold hearing and report.**—In determining the granting or refusal of an application for a licence or renewal of licence, or the revocation of an existing licence under this section, the Superintendent may, and shall when so requested in writing by the applicant or licensee, appoint an advisory board consisting of,

- (a) a representative of insurers;
- (b) a representative of agents; and
- (c) a representative of the Superintendent,

which shall hold a hearing and make a report to the Superintendent with such recommendation as it considers fit.

(10) Chairman of board.—The representative of the Superintendent upon the advisory board shall act as chairman and, for the purposes of his or her duties in connection with the investigation and hearing contemplated by subsection (9), has the same powers as are vested in the Superintendent by section 22.

(11) Term and renewal of licence.—A licence issued hereunder expires at such time as the regulations provide unless automatically suspended by notice under subsection (6) or unless revoked or suspended by the Superintendent; but such licence may, in the discretion of the Superintendent, be renewed upon due application upon a form prescribed by the Superintendent giving such information as the Superintendent may require, accompanied by a certificate of agency appointment of a licensed insurer and payment of the prescribed fee, without requiring anew the detailed information hereinbefore specified.

(12) Authority of agent.—A licence referred to in clause (2)(b) or (c) authorizes an agent to act for one insurer only.

(12.1) Same.—For purposes of subsection (12), the insurer must be specified in the licence and licensed for the classes of insurance referred to in clause (2)(b) or (c).

(12.2) Representation restricted.—An agent holding a licence referred to in clause (2)(b) or (c) shall not make any representation to the public, by advertisement or otherwise, that the agent is an agent of any insurer other than the one specified in the licence for the purposes of selling the classes of insurance specified in the licence.

(13) Insurance groups.—Despite subsection (12), an agent may be licensed to act as agent for an affiliated group of insurers that, in the opinion of the Superintendent, are carrying on business as a common undertaking and such affiliated group of insurers shall be deemed to be an insurer for the purpose of determining the agent's authority to act as an agent under this Act.

(13.1) Same.—For the purpose of subsection (13), mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund and insurers in whose fully paid shares a mutual insurance corporation has invested under subsection 433(9) shall be deemed to be an affiliated group of insurers carrying on business as a common undertaking.

(14) Life insurance; recognition of organization.—The Commissioner may recognize an organization for the purposes of this Part if the Commissioner is satisfied that,

- (a) the organization is composed of persons who reflect the composition of the life insurance industry and persons who represent the interests of purchasers of life insurance, and is organized for the purpose of regulating the operations and the standards of practice and business conduct of agents who hold licences within the class of licences referred to in clause (2)(a) with a view to promoting the protection of purchasers of life insurance and the public interest; and

(b) recognition of the organization would be in the public interest.

(15) **Terms and conditions.**—A recognition under subsection (14) shall be made in writing and shall be subject to such terms and conditions as the Commissioner may impose.

(16) **Functions of recognized organization.**—An organization recognized under subsection (14) shall, in accordance with this Act and the regulations,

- (a) issue, renew, suspend and revoke licences within the class of licences referred to in clause (2)(a);
- (b) receive and investigate complaints against agents who hold licences within the class of licences referred to in clause (2)(a);
- (c) discipline agents who hold licences within the class of licences referred to in clause (2)(a);
- (d) develop and establish examinations and educational programs for persons wishing to be licensed within the class of licences referred to in clause (2)(a) and for agents who hold those licences;
- (e) institute and conduct prosecutions for offences under this Act against agents who hold licences within the class of licences referred to in clause (2)(a); and
- (f) exercise such other powers and perform such other duties as are prescribed by the regulations.

(17) **Application of subss. (1), (3), (4) and (6) to (11).**—If an organization is recognized under subsection (14), subsections (1), (3), (4) and (6) to (11) do not apply in respect of licences within the class of licences referred to in clause (2)(a).

(18) **Approval of by-laws and resolutions.**—No by-law or resolution of an organization recognized under subsection (14) and no amendment, revision or consolidation of the by-laws or resolutions of the organization shall come into effect unless it is approved by the Superintendent.

(19) **Limits on by-laws, resolutions.**—No by-law or resolution of an organization recognized under subsection (14) shall contravene this Act or the regulations.

(20) **Suspension or revocation of recognition.**—The Commissioner may make an order suspending, revoking or imposing terms and conditions on the recognition of an organization recognized under subsection (14) if, in the Commissioner's opinion, that action is in the public interest.

(20.1) **Opportunity to be heard.**—Subject to subsection (20.2), no order shall be made under subsection (2) unless the organization has been given an opportunity to be heard by the Commissioner.

(20.2) **Temporary suspension order.**—If the Commissioner is of the opinion that any delay could be prejudicial to the public interest, he or she may make a temporary

order under subsection (20) suspending the recognition of the organization without providing an opportunity to be heard.

(20.3) Period of temporary order.—The temporary order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commissioner.

(20.4) Extension of temporary order.—The Commissioner may extend a temporary suspension order until the hearing is concluded if a hearing is commenced within the fifteen-day period.

(20.5) Voluntary surrender.—On application by an organization recognized under subsection (14), the Commissioner may accept, on such terms and conditions as he or she may impose, the voluntary surrender of the recognition of the organization if the Commissioner is satisfied that the surrender of the recognition would not be prejudicial to the public interest.

(20.6) Immunity.—No action or other proceeding for damages shall be instituted against an organization recognized under subsection (14), a committee of an organization recognized under subsection (14), any member of the organization or committee, or any officer, servant, agent or appointee of the organization, for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

(20.7) Agreements with other regulations.—An organization recognized under subsection (14) may enter into agreements with regulators of life insurance agents outside Ontario with respect to the qualifications required to obtain a licence within the class of licences referred to in clause (2)(a).

(20.8) Same.—An agreement under subsection (20.7) prevails over the regulations.

(20.9) Exclusive jurisdiction.—If an organization is recognized under subsection (14) and a proceeding is conducted under this Act or the regulations before a member or committee of the organization, the member or committee has exclusive jurisdiction to exercise the powers conferred on the member or committee under this Act and the regulations and to determine all questions of fact or law that arise in the proceeding.

(20.10) Certificates.—An organization recognized under subsection (14) may issue a certificate,

- (a) stating that on a stated day a person was or was not licensed under this section, or that the licence was renewed, suspended or revoked on a stated day;
- (b) stating that a copy of, or extract from, a document or thing in the custody of the organization is a true copy of, or extract from, the original; or
- (c) stating whether a document or notification was received or issued by the organization under this Act.

(20.11) Organization documents as evidence.—A certificate, licence, order, decision, direction, inquiry or notice under this Act that purports to be signed on behalf of

an organization recognized under subsection (14) shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the signature or the position of the person appearing to have signed it.

(20.12) **True copies as evidence.**—A true copy certified by an organization under clause (20.10)(b) is admissible in evidence to the same extent as and has the same evidentiary value as the documents or thing of which it is a copy.

(20.13) **Annual report of Superintendent.**—The Superintendent shall make an annual examination of the affairs of an organization recognized under subsection (14) and shall report concerning the examination to the Minister.

(21) **Regulations.**—The Lieutenant Governor in Council may make regulations,

- (a) prescribing requirements, qualifications and terms and conditions for the granting or renewal of licences;
- (b) providing for the holding of examinations for applicants for licences or renewals of licences;
- (c) classifying applicants for licences and restricting or prohibiting the licensing of any class of applicant;
- (c.1) providing that subsections (3), (4) and (6) do not apply in circumstances specified in the regulations in respect of a licence within the class of licences referred to in clause (2)(a);
- (d) prescribing the grounds upon which a licence may be revoked, suspended or not renewed;
- (d.1) governing reports by insurers to the Superintendent or an organization recognized under subsection (14) on the suitability of an applicant or licensee to carry on business as an agent;
- (d.2) requiring insurers that authorize agents to act on their behalf to establish and maintain a system to screen each agent and supervise activities of each agent;
- (d.3) prescribing terms and conditions under which an organization may be recognized under subsection (14);
- (d.4) prescribing powers and duties of an organization recognized under subsection (14);
- (d.5) governing the maintenance of records by an organization recognized under subsection (14);
- (d.6) governing records by an organization recognized under subsection (14) to the Superintendent relating to the organization's activities;
- (d.7) providing that part or all of the fees paid to obtain or renew licences within the class of licences referred to in clause (2)(a) be paid to an organization recognized under subsection (14);
- (d.8) authorizing and regulating the exchange of personal information within the

meaning of the *Freedom of Information and Protection of Privacy Act* for the purposes of this Act between the Superintendent and an organization recognized under subsection (14);

- (d.9) prescribing standards of practice and duties of agents who hold licences within the class of licences referred to in clause (2)(a), including prescribing a code of ethics;
- (d.10) governing the receipt and investigation of complaints against agents who hold licences within the class of licences referred to in clause (2)(a) by an organization recognized under subsection (14);
- (d.11) governing the discipline of agents who hold licences within the class of licences referred to in clause (2)(a), including authorizing an organization recognized under subsection (14) to impose fines, issue letters of reprimand and suspend or revoke agents' licences;
- (d.12) prescribing procedures to be followed by an organization recognized under subsection (14), including authorizing the awarding of costs in a hearing conducted by the organization or by a committee of the organization.
- (e) regulating the method of handling premiums collected and requiring and regulating accounts and records to be maintained by agents;
- (f) requiring agents to supply information and make returns to the Superintendent;
- (f.1) requiring agents who hold licences within the class of licences referred to in clause (2)(a) to supply information and make returns to an organization recognized under subsection (14);
- (g) requiring an agent to furnish a bond or other security and fixing the amount, form, requirements and terms thereof;
- (g.1) requiring that agents who hold licences within the class of licences referred to in clause (2)(a) carry errors and omissions insurance, furnish a fidelity bond or belong to a compensation fund, and fixing the amount, form, requirements and terms thereof;
- (g.2) regulating the replacement of an existing contract of life insurance by another contract of life insurance;
- (g.3) prescribing the duties of insurers and agents in connection with the replacement of life insurance contracts.
- (h) prescribing forms and providing for their use, or requiring the use of forms approved by the Superintendent or an organization recognized under subsection (14).
- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this section.

(21.1) **General or particular.**—A regulation under subsection (21) may be general or particular.

(21.2) **Powers of entry and search.**—A regulation under clause (21)(d.4) may give an organization recognized under subsection (14) the power to conduct examinations and may make section 444 applicable, with necessary modifications, to an examination conducted by the organization.

(22) **Scope of regulations.**—Regulations made under subsection (21) are in addition to the provisions of this section notwithstanding that the regulations concern a matter provided for in this section.

(23) **Offence.**—Every person who assumes to act as an agent without the licence required by this section, or while the person's licence as such is suspended, is guilty of an offence. S.O. 1994, c. 11, s. 339(1)-(10).

Provisions Relating to Agents and Brokers Generally

394. (1) Agent or broker receiving premiums.—An agent or broker shall, for the purpose of receiving any premium for a contract of insurance, be deemed to be the agent of the insurer notwithstanding any conditions or stipulations to the contrary.

(2) **Exception.**—This section does not apply to life insurance.

395. Fraudulent representations.—An agent or broker who knowingly procures, by fraudulent representations, payment or the obligation for payment of any premium on an insurance policy is guilty of an offence.

396. Personal liability of agent for unlawful contracts.—An agent or broker is personally liable to the insured on all contracts of insurance unlawfully made by or through the agent or broker directly or indirectly with any insurer not licensed to undertake insurance in Ontario in the same manner as if such agent or broker were the insurer.

Licences of Insurance Adjusters

397. (1) Licences of insurance adjusters.—The Superintendent may, upon the payment of the prescribed fee, issue to any suitable person a licence to act as an adjuster, but a person licensed as an insurance agent or broker under this Part shall not receive a licence to act as an insurance adjuster.

(2) **Application to be filed with Superintendent.**—The applicant for such licence shall file with the Superintendent a written application under oath upon a form provided by the Superintendent in which the applicant shall state his name, age, residence and occupation for the five years next preceding the date of the application and such other information as the Superintendent may require, and the applicant shall furnish a statement as to his or her trustworthiness and competency signed by at least three reputable persons resident in Ontario.

(3) **Licence to be in force one year.**—If the Superintendent is satisfied with the statements and information required, the Superintendent shall issue the licence, which expires on the 30th day of June in each year unless sooner revoked or suspended.

(4) **Renewal of licence.**—A licence may, in the discretion of the Superintendent and upon payment of the prescribed fee, be renewed for each succeeding year without requiring anew the detailed information hereinbefore specified.

(5) **Revocation or suspension of licence.**—The Superintendent may, for cause shown and after a hearing, revoke the licence, or may suspend it for a period not exceeding the unexpired term thereof, and may, for cause shown and after a hearing, revoke the licence while so suspended, and shall notify the licensee in writing of the revocation or suspension.

(6) **Application of s. 393(8-10).**—The provisions of subsections 393(8), (9) and (10), with reference to grounds of revocation of licence, to the appointment of an advisory board and to the power of the chairman thereof in the matter of insurance agents' licences, apply with necessary modifications to applicants and licensees under this section, except that a representative of adjusters shall replace a representative of agents on the board.

(7) **Offence.**—A person who acts as an adjuster without such a licence or during a suspension of the person's licence is guilty of an offence.

398. (1) Prohibition against public adjusters of motor accident claims.—Subject to subsection (2), no person shall, on the person's own behalf or on behalf of another person, directly or indirectly,

- (a) solicit the right to negotiate, or negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or
- (b) hold himself, herself or itself out as an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.

(2) **Exception.**—This section does not apply to a barrister or solicitor acting in the usual course of the practice of law.

Partnership Licences of Agents and Adjusters

399. (1) Licences to partnerships.—Licences as agents or adjusters may be issued to partnerships on the conditions hereinbefore specified for the issue of such licences to individuals except as otherwise provided in this section.

(2) **Statement to be filed by each partner.**—Each member of the partnership shall file the statement or application and pay the prescribed fee, including a written request that the licence be issued in the name of the partnership, and the licence may be revoked or suspended as to one or more members of the partnership.

(3) **Termination of partnership.**—If the partnership is terminated before the expiration of the licence, the partners shall forthwith give notice to the Superintendent or the organization recognized under subsection 393(14), as the case may be.

(3.1) **Revocation.**—If notice is given under subsection (3), the partnership's licence shall be revoked.

(4) **Offence.**—A member of a partnership licensed under this section who contravenes any of its provisions is guilty of an offence. S.O. 1994, c. 11, s. 340.

*Corporation Licences of Agents
and Adjusters*

400. (1) Licences to corporations.—Licences as agents or adjusters may be issued to any corporation that is incorporated expressly for the purpose of acting as an insurance agent or adjuster or for that and such other purposes as the Superintendent or the organization recognized under subsection 393(14), as the case may be expressly approves of and where the corporation has been incorporated under the *Business Corporations Act* after the 30th day of June, 1971, the articles of incorporation shall have been approved by the Superintendent or the organization recognized under subsection 39(4), as the case may be prior to incorporation.

(2) **When licences not to be issued.**—Licences as agents shall not be issued to a corporation whose head office is outside Canada or if it appears to the Superintendent or the organization recognized under subsection 393(14), as the case may be that the application is made for the purpose of acting as agent wholly or chiefly in the insurance of property owned by the corporation or by its shareholders or members, or in the placing of insurance for one person, firm, corporation, estate or family.

(3) **Prohibition on licensing non-residents.**—No licence shall be issued to a corporation that carried on business as an insurance agent or adjuster if the majority of its issued and outstanding shares that entitle the holder to any voting rights are owned beneficially or otherwise by a non-resident of Canada unless such corporation was so licensed on the 27th day of April, 1972.

(4) **Definition of non-resident.**—For the purpose of this section, non-resident means,

- (a) an individual who is not ordinarily resident in Canada;
- (b) a company incorporated, formed or otherwise organized, elsewhere than in Canada;
- (c) a company that is controlled directly or indirectly by non-residents as determined in clause (a) or (b);
- (d) a trust established by a non-resident as defined in clause (a) or (c), or a trust in which non-residents, as so defined, have more than 50 per cent of the beneficial interest; or
- (e) a company that is controlled directly or indirectly by a trust mentioned in clause (d).

(5) **Prohibition of a non-resident to amalgamate.**—A corporation that was licensed as an agent or adjuster, on or before the 27th day of April, 1972, and whose issued

shares entitling the holders thereof to voting rights were more than 50 per cent owned, as of that date, beneficially or otherwise, by one or more non-residents of Canada is not entitled to continue to hold a licence if it amalgamates, unites, merges, acquires the assets or business of, or acquires the shares of any other licensed agent or adjuster.

(6) **Provisions as to licences.**—Except as otherwise provided in this section, such licences, and the corporation and officers of the corporation named in the licence, are subject to the provisions of this Act with respect to agents and adjusters.

(7) **Officers who may act under licence.**—The licence shall specify the officers who may act there-under in name and on behalf of the corporation and every such officer shall file a statement or application and pay the prescribed fee for individual agents, brokers or adjusters, but employees who do not receive commissions and who perform office duties only on behalf of the corporation may so act by authority of the corporation licence although not named therein.

(8) **Revocation of licence.**—A licence may be revoked or suspended as to the corporation or as to any officers named therein.

(9) **Superintendent may require information.**—If the principal business of a corporation licensed under this section is not the business of an insurance agent or adjuster, the Superintendent or the organization recognized under subsection 393(14), as the case may be may require from such a corporation such information as he or she considers necessary in respect to the corporation, its officers and affairs and may make such examination of its books and affairs as he considers necessary for the purposes of this Act.

(10) **Dissolution of corporation.**—If a corporation licensed under this section is dissolved or its instrument of incorporation is revoked, the corporation shall forthwith give notice to the Superintendent or the organization recognized under subsection 393(14), as the case may be.

(10.1) **Revocation.**—If notice is given under subsection (10), the corporation's licence shall be revoked.

(11) **Personal liability of officers.**—An officer specified in the licence who contravenes any of the provisions of this section is guilty of an offence and is personally liable therefor, although such contravention is committed in the name and on behalf of the corporation, and the corporation is liable for any such contravention the responsibility for which cannot be placed upon any such officer. S.O. 1994, c. 11, s. 341(1)-(4).

*Provisions Relating to Agents, Brokers
and Adjusters Generally*

401. Acting as agent or adjuster without authority.—A person who, not being duly licensed as an agent or adjuster, represents or holds himself, herself or itself out to the public as being such an agent or adjuster, or as being engaged in the insurance business by means of advertisements, cards, circulars, letterheads, signs or other methods, or, being duly licensed as such agent or adjuster, advertises as aforesaid or carries on such business in any other name than that stated in the licence, is guilty of an offence.

402. (1) Agent to be deemed to hold premium in trust for insurer.—An agent or broker who acts in negotiating, or renewing or continuing a contract of insurance, other than life insurance, with a licensed insurer, and who receives any money or substitute for money as a premium for such a contract from the insured, shall be deemed to hold such premium in trust for the insurer, and, if the agent or broker fails to pay the premium over to the insurer within fifteen days after written demand made upon the agent or broker therefor, less the commission of the agent or broker and any deductions to which, by the written consent of the company, the agent or broker is entitled, such failure is evidence that the agent or broker has used or applied the premium for a purpose other than paying it over to the insurer.

(2) Agent to be deemed to hold money in trust for payee under policy.—An agent or broker who acts in negotiating or renewing or continuing a contract of insurance with a licensed insurer, and who receives any money or substitute for money for payment to a person in respect of the contract of insurance shall be deemed to hold such money in trust for the person entitled thereto, and, if the agent or broker fails to pay the money over to such person within fifteen days after written demand made upon the agent or broker therefor, less the commission of the agent or broker and any deductions to which the agent or broker is entitled, such failure is proof, in the absence of evidence to the contrary, that the agent or broker has used or applied the money for a purpose other than paying it over to the person entitled.

403. (1) No compensation to be paid by insurer not licensed.—No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting so to do, who, at the date thereof, is not an agent or broker and whoever contravenes this subsection is guilty of an offence.

(2) Agreement as to premium other than as in policy prohibited.—No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly make or attempt to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or pay, allow or give, or offer or agree to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy, or any other consideration or thing of value intended to be in the nature of a rebate of premium, to any person insured or applying for insurance in respect of life, person or property in Ontario, and an insurer or other person who contravenes this subsection is guilty of an offence.

(3) Exceptions.—Nothing in this section affects any payment by way of dividend, bonus, profit or savings that is provided for by the policy, or shall be constructed so as to prevent an insurer compensating a salaried employee of its head office or a branch office in respect of insurance issued by the employing insurer upon the life of such employee or upon the employee's property or interests in Ontario or so as to require that such employee shall be licensed as an agent under this Act to affect such insurance. S.O. 1994, c. 11, s. 342.

404. [Repealed. S.O. 1994, c. 11, s. 343.]

405. [Repealed. S.O. 1994, c. 11, s. 343.]

406. [Repealed. S.O. 1993, c. 10, s. 37.] Amended. S.O. 1993, c. 27, Sch.

407. Limited or conditional licence.—A licence may be issued to an agent or adjuster subject to such limitations and conditions as the Superintendent or the organization recognized under subsection 393(14), as the case may be may prescribe. S.O. 1994, c. 11, s. 344.

PART XV

RATES AND RATING BUREAUS

408. Definition.—In this part, “rating bureau” means an association or body, incorporated or unincorporated, created or organized for the purpose of fixing or promulgating rates of premium payable upon contracts of insurance in Ontario, or the terms or conditions of such contracts, or for these and other purposes, or that assumes to fix or promulgate such rates, terms or conditions by agreement among the members thereof or otherwise.

409. (1) Filing of constitution by-laws, etc.—A rating bureau shall, forthwith after adoption, file in the office of the Superintendent duly certified copies of its constitution, articles of association and by-laws, and a list of its members and their addresses, and thereafter shall file in the office of the Superintendent every amendment, revision or consolidation of its constitution, articles of association and by-laws, and notice of the admission of new members and the withdrawal of former members, within thirty days after the passing or adoption of such amendment, revision or consolidation, or after the admission or withdrawal of such members.

(2) Return of rates.—A rating bureau and a licensed insurer shall make a return under oath to the Superintendent in such form and at such times as he may require, showing every schedule of rates fixed, made or charged by them, together with such further or other information concerning such rates as he may require.

(3) Changes in rates.—A rating bureau and a licensed insurer shall give to the Superintendent at least ten days notice of any change in the schedules of rates or rules applicable thereto filed with the Superintendent under subsection (2), and shall file with the Superintendent amended schedules duly verified under oath showing particulars of all such changes before their effective date.

(4) Offence for deviation from filed rate.—A rating bureau or licensed insurer that, having filed its schedules of rates under this section, fixes, makes or charges a rate or receives a premium that deviates from the schedules of rates fixed and filed with the Superintendent for, and the rules applicable to, any risk or class of risks is guilty of an offence.

410. (1) Application re risk classification system, rates.—Every insurer shall apply to the Commissioner for approval of,

- (a) the risk classification system it intends to use in determining the rates for each coverage and category of automobile insurance; and
- (b) the rates it intends to use for each coverage and category of automobile insurance.

(2) **Exception.**—An insurer is not required to apply for approval of a risk classification system that the insurer is required to use under the regulations.

(3) **Material to be furnished.**—An application for approval of a risk classification system or rates shall be in a form approved by the Commissioner and shall be filed together with such information, material and evidence as the Commissioner may specify.

(4) **Additional information.**—The Commissioner may require an applicant to provide such information, material and evidence as the Commissioner considers necessary in addition to the information, material and evidence required to be provided in or with the application.

(5) **Definition.**—In this section,

“insurer”,—“insurer” includes the Facility Association. S.O. 1993, c. 10, s. 38; S.O. 1996, c. 21, s. 44.

411. (1) Expedited applications.—An applicant under section 410 may choose to have this section apply to the application if the application meets the following criteria:

1. The average of the proposed rates for each coverage and category of automobile insurance does not exceed the average of the existing rates by more than a percentage prescribed by the regulations for that class of applicant, coverage and category, and the proposed rates meets such other criteria as are prescribed by the regulations for the purposes of this section.
2. The proposed risk classification system for each coverage and category of automobile insurance does not contain elements prescribed by the regulations for the purposes of this section.

(2) **Deemed approval after 30 days.**—An application to which this section applies shall be deemed to have been approved by the Commissioner 30 days after it is filed, unless the Commissioner within that 30-day period advises the applicant orally or otherwise that the Commissioner has not approved the application.

(3) **Earlier approval.**—The Commissioner may approve the application before the expiry of the 30-day period.

(4) **Notice.**—If the Commissioner notifies an insurer orally that he or she has not approved the application, the Commissioner shall promptly mail a written notice to the applicant confirming that fact.

(5) **Effect of notice.**—If the Commissioner notifies the insurer that he or she has not approved the application, the insurer may,

- (a) submit a new application to the Commissioner; or

- (b) resubmit the same application to the Commissioner, in which case section 412 applies to the application and this section does not apply. S.O. 1993, c. 10, s. 38; S.O. 1996, c. 21, s. 44.

412. (1) Other applications.—An application under section 410 to which section 411 does not apply shall be deemed to have been approved by the Commissioner 60 days after it is filed, unless the Commissioner within that 60-day period advises the applicant orally or otherwise that the Commissioner has not approved the application.

(2) **Same.**—The Commissioner may approve the application before the expiry of the 60-day period.

(3) **Extension of time.**—The Commissioner may extend the period for approval for a period not exceeding 60 days.

(4) **Notice.**—If the Commissioner notifies an applicant orally that he or she has not approved an application, the Commissioner shall promptly mail a written notice to the applicant confirming that fact.

(5) **No approval if hearing required.**—The Commissioner shall not approve the application if a hearing is required by the regulations or the Commissioner considers that it is in the public interest to hold a hearing on the application.

(6) **Hearing.**—If the Commissioner notifies an applicant that he or she has not approved the application, the Commissioner shall hold a hearing.

(7) **Powers of the Commissioner.**—Following the hearing, the Commissioner may approve or refuse to approve the application or may vary the risk classification system or the rates, and the approval may be subject to such conditions or restrictions as the Commissioner considers appropriate in the circumstances. S.O. 1993, s. 10, s. 39; S.O. 1996, c. 21, s. 45.

412.1 (1) Refusal to approve.—The Commissioner shall refuse to approve an application under section 410 if the Commissioner considers that the proposed risk classification system or rates are not just and reasonable in the circumstances.

(2) **Same.**—The Commissioner shall refuse to approve an application under section 410 respecting a proposed risk classification system that the Commissioner considers,

- (a) is not reasonably predictive of risk; or
- (b) does not distinguish fairly between risks.

(3) **Same.**—The Commissioner shall refuse to approve an application under section 410 respecting proposed rates that the Commissioner considers would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer.

(4) **Relevant information.**—In deciding on an application under section 410, the Commissioner may take into account financial and other information and such other matters as may directly or indirectly affect the applicant's proposed rates or the applicant's ability to underwrite insurance using the proposed risk classification system. S.O. 1996, c. 21, s. 45.

413. (1) Exemptions from approval process.—The Commissioner may exempt insurers, other than the Facility Association, from making an application under section 410 in respect of designated categories or coverages of automobile insurance.

(2) **Filing.**—An insurer shall file the risk classification systems and rates it intends to use for the exempted categories or coverages of automobile insurance in a form approved by the Commissioner.

(3) **Effective date.**—Subject to subsections (3.1) and (3.2), the insurer may use a risk classification system or rates filed under this section after the expiration of thirty days following the date they were filed unless, before the expiration of that period, the Commissioner advises the insurer orally or otherwise that the Commission intends to hold a hearing on the risk classification system or the rates filed by the insurer.

(3.1) **Extension of period.**—Before the expiration of the thirty-day period referred to in subsection (3), the Commissioner may extend the period for a further period specified by the Commissioner of not more than thirty days.

(3.2) **Abridgement of period.**—The Commissioner may authorize the insurer to use a risk classification system or rates filed under this section before the expiration of the period referred to in subsection (3) or (3.1).

(3.3) **Notice.**—If the Commissioner notifies an insurer orally that he or she intends to hold a hearing on a risk classification system or rates filed by the insurer, the Commissioner shall promptly mail a written notice to the insurer confirming that fact.

(3.4) **Hearing.**—If the Commissioner notifies an insurer under subsection (3) or (3.3) that he or she intends to hold a hearing, the Commissioner shall hold a hearing and, for that purpose, subsections 410(3) and (4) and 412(7) and section 412.1 apply, with necessary modifications, as if the insurer had made an application under section 410.

(4) **Revocation of exemption.**—If the Commissioner revokes an exemption, insurers are required to apply within thirty days after the revocation for approval under section 410 of the risk classification systems and rates it is using for the categories or coverages of automobile insurance affected by the revocation.

(5) **Idem.**—An insurer may continue to use the risk classification systems and rates filed before the Commissioner revoked the exemption until the insurer's application under subsection (4) is determined. S.O. 1993, c. 10, s. 40(1)-(4); S.O. 1996, c. 21, s. 46.

413.1 (1) Prohibition, risk classification and rate determination regulations.—No insurer shall, as a result of the application of a regulation made under paragraph 36 or 36.1 of subsection 121(1), increase or decrease the rate for a class of risks in respect of a coverage or category of automobile insurance by more than the maximum monetary amount or percentage prescribed under paragraph 36.3 of subsection 121(1).

(2) **Application for phase-in of regulations.**—If a regulation made under paragraph 36 or 36.1 of subsection 121(1) would require an insurer to increase or decrease the rate for a class of risks in respect of a coverage or category of automobile insurance by more than the maximum monetary amount or percentage prescribed under paragraph

36.3 of subsection 121(1), the insurer shall apply to the Commissioner for approval of a plan that will phase in the increase or decrease over a period specified in the application by exempting the insurer, in whole or in part, from the regulations made under paragraphs 36 to 36.3 of subsection 121(1) for the specified period.

(3) **Material to be furnished.**—The application shall be in a form approved by the Commissioner and shall be filed together with such information, material and evidence as the Commissioner may specify.

(4) **Additional information.**—The Commissioner may require the applicant to provide such information, material and evidence as the Commissioner considers necessary in addition to the information, material and evidence required to be provided in or with the application.

(5) **Approval.**—The application may be approved by the Commissioner only if, in the opinion of the Commissioner,

- (a) the plan will permit the regulations under paragraphs 36 and 36.1 of subsection 121(1) to apply to the application without any exemption at the end of the period specified in the application;
- (b) the period of time during which an exemption will apply to the applicant is reasonable;
- (c) the plan will cause a minimum of disruption in the automobile insurance market;
- (d) the plan will not impair the solvency of the applicant; and
- (e) the plan is in the public interest.

(6) **Variation.**—The Commissioner may, with the consent of the applicant or after a hearing, approve an application under subsection (5) subject to such variations and subject to such terms and conditions as the Commissioner considers appropriate.

(7) **Reconsideration.**—The Commissioner may order a hearing to reconsider a plan approved under subsection (5) if the Commissioner, at any time, is of the opinion that any of the criteria specified in clauses (5)(a) to (e) may not be satisfied.

(8) **Revocation or variation of approved plan.**—Following a hearing under subsection (7) or section 412, the Commissioner may revoke the approval of a plan approved under subsection (5) or make such variations to the plan as the Commissioner considers appropriate.

(9) **Definition.**—In this section, “insurer” includes the Facility Association. S.O. 1993, c. 10, s. 41.

414. (1) Applications by affiliates.—The Commissioner may require that affiliated insurers who write automobile insurance in Ontario file their applications under section 410, 413 or 413.1 concurrently.

(2) **Idem.**—The Commissioner may consider the risk classification system and the rates of the affiliates of an insurer when deciding upon the insurer’s application.

(2.1) **New affiliates.**—If two or more insurers become affiliated, they shall notify the Commissioner within thirty days in the form approved by the Commissioner and the Commissioner may require the insurers to provide such additional information, material and evidence as the Commissioner considers necessary.

(3) **Interpretation.**—For the purpose of this section, an insurer is considered to be affiliated with another insurer if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. S.O. 1993, c. 10, s. 42(1)-(3); S.O. 1996, c. 21, s. 47.

415. (1) Reconsideration.—Despite any approval or exemption under section 411, 412 or 413, the Commissioner may, at any time, order a hearing with respect to any risk classification system or rates for any coverage or category of automobile insurance of an insurer if the Commissioner is of the opinion that,

- (a) the risk classification system or rates are not just and reasonable in the circumstances;
- (b) the risk classification system is not reasonably predictive of risk or does not distinguish fairly between risks; or
- (c) the rates would impair the solvency of the insurer or are excessive in relation to the financial circumstances of the insurer.

(2) **Application under s. 412.**—Instead of ordering a hearing under subsection (1), the Commissioner may require the insurer to make an application under section 410.

(2.1) **Application of s. 411.**—Section 411 does not apply to an application required by the Commissioner under subsection (2).

(3) **Variation.**—Following a hearing ordered under subsection (1), the Commissioner may vary the risk classification system the insurer may use or the rates it may charge.

(4) **Deemed approval.**—For the purposes of section 417, a risk classification system and rates varied under subsection (3) shall be deemed to be a risk classification system and rates approved by the Commissioner.

(5) **Definition.**—In this section, “insurer” includes the Facility Association. S.O. 1993, c. 10, s. 43; S.O. 1996, c. 21, s. 48.

416. (1) Policy statements.—The Minister may issue policy statements on matters related to risk classification systems and automobile insurance rates.

(2) **When effective.**—A policy statement takes effect on the day it is published in *The Ontario Gazette*.

(3) **Effect of statement.**—The Commissioner shall have regard to the policy statements issued under this section in making decisions under this Part. S.O. 1993, c. 10, s. 44.

417. (1) Prohibition, risk classification systems.—No insurer shall use a risk classification system in classifying risks for a coverage or category of automobile insurance unless the system,

- (a) is approved by the Commissioner;
- (b) is authorized under section 413; or
- (c) is required under the regulations.

(2) Idem, rates.—No insurer shall use a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 413.

(3) Definition.—In this section, “insurer” includes the Facility Association.

(4) Coming into force.—This section comes into force on a day to be named by proclamation of the Lieutenant Governor. S.O. 1993, c. 10, s. 45.

417.1 (1) Reports on risk classification and rate determination regulations.—The Commission shall, at least once every three years, seek the views of interested persons on the operation of the regulations made under paragraphs 35 to 36.1 of subsection 121(1) and submit to the Minister a report containing the Commission’s recommendations for amendments to the regulations.

(2) Tabling of reports.—The Minister shall submit the reports of the Commission to the Lieutenant Governor in Council and shall lay them before the Legislative Assembly if it is in session or, if not, at the next session. S.O. 1993, c. 10, s. 46.

418. (1) Inquiry.—The Superintendent may inquire into any question that an insurer, insured or a rating bureau may bring before him with regard to insurance rates fixed by a rating bureau or charged by an insurer and also with regard to any other question arising out of the relationship or proposed relationship of the parties with reference to the insurance in question.

(2) Report.—The Superintendent shall not make an order pursuant to an inquiry under this section, but the result of the inquiry shall be reported in the Superintendent’s annual report.

PART XVI

AMALGAMATION, TRANSFER AND REINSURANCE

419. Definition.—In sections 420 to 429, “reinsurance” means an agreement whereby contracts made in Ontario by a licensed insurer incorporated or organized under the laws of Ontario or any class or group of such contracts are undertaken or reinsured by another insurer either by novation, transfer or assignment or as a result of amalgamation of the insurers.

420. (1) Application.—Nothing in this Part affects contracts of reinsurance of individual risks made by insurers in the ordinary course of business.

(2) Amalgamation: compliance with law where incorporated.—In the case of the amalgamation of insurers, if one of the contracting insurers is an insurer not incorporated or organized under the law of Ontario, the Superintendent shall not recommend that the agreement be approved by the Lieutenant Governor in Council as hereinafter provided until it has been established to his satisfaction that the insurers party to the agreement have fully complied with the requirements of the law of the legislative authority under which the insurer was incorporated or organized, but a certificate of the supervising insurance official appointed by such legislative authority that such insurer has fully complied with the requirements of the law of the authority is sufficient evidence to the Superintendent of that fact.

421. (1) Agreement to be in writing.—An agreement for reinsurance shall be evidenced by an instrument in writing setting forth in full the terms and conditions of such reinsurance, but no such agreement shall be entered into unless and until the permission of the Superintendent has been obtained, and the agreement is not binding or effective until approved by the Lieutenant Governor in Council upon the report of the Superintendent.

(2) Irregularity not to invalidate.—Upon the approval of the Lieutenant Governor in Council, such agreement is valid and binding notwithstanding any irregularity in procedure or any failure to comply with the procedural provisions of this Part.

422. Approval of Lieutenant Governor in Council.—When any such agreement for reinsurance has been entered into, the insurers party thereto shall within thirty days from the date of its execution apply for its approval to the Lieutenant Governor in Council by petition filed with the Superintendent.

423. (1) Notice, etc., to shareholders and policyholders.—In the case of life insurance, before any such application is made, notice thereof together with,

- (a) a statement of the nature and terms of the agreement for reinsurance;
- (b) an abstract containing the material facts embodied in the agreement under which such reinsurance is proposed to be effected; and
- (c) copies of the actuarial or other reports upon which the agreement is founded, including a report by an independent actuary approved by the Superintendent,

shall be served on the shareholders or members and on the holders of all policies in Ontario, other than industrial policies of each insurer, but the Superintendent may dispense with the service of such documents on the policyholders of the reinsuring insurer.

(2) Service.—Such notice and documents shall be served by being transmitted through the post office directed to the registered or other known address of each such shareholder, member and policyholder and within such period that they may be delivered in the due course of delivery at least thirty days before the day appointed for the hearing of the application.

(3) **Service on members of fraternal society.**—Where a fraternal society is a party to an agreement for reinsurance, such notice and documents shall be deemed to be served on the members of the fraternal society if published in the official organ or publication, if any, of such society at least thirty days before the day appointed for the hearing of the application.

(4) **Inspection of agreement.**—The agreement under which the reinsurance is proposed to be effected shall be open to the inspection of the policyholders and shareholders at the principal offices of the insurers in Ontario for a period of thirty days after the issue of the abstract herein provided for.

(5) **Publication of notice.**—A copy of such notice shall also be published in *The Ontario Gazette* at least thirty days before the application is made.

424. Retiring allowance for officers of fraternal society.—In the case of fraternal societies, any such agreement for reinsurance may provide for granting out of the funds of the continuing society to the officer who has been in the service of a society party to such agreement for at least twenty years, and who is more than sixty years of age, and whose services will not be required after the agreement becomes effective, a sum not exceeding the aggregate of the officer's salary or other remuneration for the next preceding three years or, in the alternative, an annual retiring allowance to any such officer during the remaining years of his or her life not exceeding three-fifths of the officer's average annual salary for the next preceding three years of service and payable weekly, semi-monthly or otherwise as is agreed upon.

425. Documents to be filed with Superintendent.—Upon the filing of the petition, the insurers party to the agreement shall deposit with the Superintendent,

- (a) a certified copy of the agreement for reinsurance;
- (b) a statement of the nature and terms of reinsurance;
- (c) certified copies of the statements of assets and liabilities of the insurers party to the agreement;
- (d) certified copies of the actuarial or other reports upon which the agreement is founded;
- (e) a declaration under the hands of the president or principal officer and manager or secretary of each insurer that to the best of their knowledge and belief every payment made or to be made to any person whatsoever on account of the reinsurance is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any of the parties to the reinsurance;
- (f) evidence of the service and publication of the notices required by section 423, if any;
- (g) such other information and reports as the Superintendent may require.

426. Day of hearing.—Upon receipt of the petition, the Superintendent shall fix a day for hearing the application and notice of the hearing shall be given in *The Ontario Gazette* at least ten days before the date fixed for the hearing.

427. Recommendation of Superintendent.—After hearing the directors, shareholders, members and policyholders and other persons whom he considers entitled to be heard upon the application or giving them an opportunity to be so heard, the Superintendent may recommend that the agreement be approved by the Lieutenant Governor in Council if the Lieutenant Governor in Council is satisfied that no sufficient objection to the arrangement has been established.

428. Impairment of assets of combined or continuing insurer.—No such agreement shall be recommended if it appears to the Superintendent that, after the consummation of the reinsurance, an impairment or deficiency will exist in the balance sheet of the continuing or reinsuring insurer when its liabilities (including its capital stock, if any) are calculated according to this Act.

429. (1) Report by Superintendent where reinsurance advisable.—If, in the case of a fraternal society, it appears to the Superintendent from the statement and reports filed with him, or from any examination or inquiry made under this Act, that, owing to depletion in membership or otherwise, the reinsurance of its contracts would be in the best interests of its members, the Superintendent shall so advise the society and request that the advisability of entering into an agreement for reinsurance be considered.

(2) Special meeting may be called.—Where, in the opinion of the governing executive authority of the society, a special meeting of the society is desirable for the purpose of considering the request of the Superintendent, the governing executive authority may call a special meeting of the supreme legislative body of the society upon such notice as the governing executive authority considers reasonable and as the Superintendent approves, and such meeting so called shall be deemed to have been regularly constituted notwithstanding any provisions contained in the constitution and laws of the society.

430. (1) Interpretation.—In this section, “reinsurance” means an agreement whereby a class or group of contracts that includes contracts made in Ontario by a licensed insurer are undertaken or reinsured by another insurer either by novation, transfer, or assignment or as a result of amalgamation of insurers but does not include a contract of reinsurance of individual risks made by insurers in the ordinary course of business.

(2) Agreement in writing.—An agreement for reinsurance shall be evidenced by an instrument in writing setting forth in full the terms and conditions of such reinsurance but no agreement with respect to contracts made in Ontario shall be entered into until the approval of the Superintendent has been obtained.

(3) Notice to policyholder.—Upon the approval of the Superintendent to an agreement for reinsurance under this section, notice thereof, together with a statement of the nature and terms of the agreement for reinsurance, in a form satisfactory to the Superintendent shall be served on all policyholders in Ontario that may be reinsured thereunder, by being sent by mail to the last known address of each such policyholder.

431. Transfer of contracts where insurer leaves Ontario.—Where under an agreement between an insurer, in this section called the “continuing insurer”, and another insurer, in this section called the “retiring insurer”, in anticipation of the retiring insurer ceasing to do business in Ontario, the continuing insurer assumes liability under contracts of insurance specified in the agreement issued by the retiring insurer and the retiring insurer ceases to carry on business in Ontario, an insured or other person entitled to rights under those contracts may enforce the rights as though those contracts had been issued by the continuing insurer.

PART XVII

INVESTMENTS

432. Definition.—In this Part, “insurer” means an insurer incorporated or organized under the laws of Ontario and in section 433 includes only a joint stock insurance company, a fraternal society, a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund, a mutual insurance corporation licensed to write life insurance and a cash-mutual insurance corporation.

433. (1) Investment powers.—An insurer may invest its funds or any portion thereof in,

- (a) **Government bonds.**—the bonds, debentures, stocks or other evidence of indebtedness issued or guaranteed by the government of,
 - (i) Canada, Australia, Sri Lanka, India, New Zealand, Pakistan, the Republic of South Africa, the United Kingdom, or any province or state thereof, or Zimbabwe or the Republic of Ireland,
 - (ii) a colony of the United Kingdom,
 - (iii) the United States of America or a state thereof,
 - (iv) a country in which the insurer is carrying on business, or a province or state thereof, or
 - (v) a colony, dependency, territory or possession of any country in which the insurer is carrying on business;
- (b) **municipal, etc. securities.**—the bonds, debentures or other evidence of indebtedness issued or guaranteed by a municipal corporation in Canada or elsewhere where the insurer is carrying on business, or by a school corporation in Canada or elsewhere where the insurer is carrying on business, or secured by rates or taxes levied under the authority of the government of a province of Canada on property situate in such province and collectable by the municipalities in which such property is situate;
- (c) **bonds issued or guaranteed by the International Bank, etc.**—the bonds, debentures or other securities issued or guaranteed by the International Bank for Reconstruction and Development;

- (d) **bonds issued or guaranteed by the International American Development Bank.**—the bonds, debentures or other securities issued or guaranteed by the Inter-American Development Bank or by the Asian Development Bank;
- (e) **federal subsidy bonds.**—the bonds or debentures issued by a corporation that are secured by the assignment to a trust company in Canada of an annual payment that the Government of Canada has agreed to make, if such annual payment is sufficient to meet the interest falling due on the bonds or debentures outstanding and the principal amount of the bonds or debentures maturing for payment in the year in which the annual payment is made;
- (f) **bonds secured by provincial subsidy.**—the bonds or debentures issued by a charitable, educational or philanthropic corporation that are secured by the payment, assignment or transfer to a trust company in Canada of subsidies, payable by or under the authority of a province of Canada, sufficient to meet the interest as it falls due on the bonds or debentures and the principal amount of the bonds or debentures on maturity;
- (g) **debentures secured by statutory charge on real estate, plant or equipment.**—the bonds, debentures or other evidences of indebtedness issued by a corporation that are fully secured by statutory charge upon real estate or upon the plant or equipment of the corporation used in the transaction of its business, if interest in full has been paid regularly for a period of at least ten years immediately preceding the date of investment in such bonds, debentures or other evidences of indebtedness upon the securities of that class of the corporation then outstanding;
- (h) **revenue bonds.**—the bonds, debentures or other evidences of indebtedness issued by an authority or other body without share capital established and empowered pursuant to the law of a country in which the insurer is carrying on business, or of a province or state thereof, or of a colony, dependency, territory or possession thereof in which the insurer is carrying on business, to administer, regulate the administration of, provide or operate port, harbour, airport, bridge, highway, tunnel, transportation, communication, sanitation, water, electricity or gas services or facilities and, for any of these purposes, to levy, impose or make taxes, rates, fees or other charges that,
 - (i) may be used only in carrying out the objects of the authority or other body and are sufficient to meet its operating, maintenance and debt service charges, or
 - (ii) in the case of an authority constituted by an Act of a national government, are fixed or authorized by law or subject to the approval of the government or a minister or ministry thereof or of a body responsible to the government or the minister or ministry;
- (i) **bonds, etc. secured by mortgage.**—the bonds, debentures or other evidences of indebtedness issued by a corporation that are fully secured by a mortgage, charge or hypothec to a trustee or to the insurer upon any, or upon any combination, of the following assets,

- (i) real estate or leaseholds,
- (ii) the plant or equipment of a corporation that is used in the transaction of its business,
or
- (iii) bonds, debentures or other evidences of indebtedness or shares, of a class authorized by this subsection as investments, or cash balances if such bonds, debentures or other evidences of indebtedness, shares or cash balances are held by a trustee,

and the inclusion, as additional security under the mortgage, charge or hypothec, of any other assets not of a class authorized by this Act as investments shall not render such bonds, debentures or other evidences of indebtedness ineligible as an investment;

- (j) **equipment trust certificates.**—obligations or certificates issued by a trustee to finance the purchase of transportation equipment for a corporation incorporated in Canada or the United States of America to be used on railways or public highways, if the obligations or certificates are fully secured by,
 - (i) an assignment of the transportation equipment to, or the ownership thereof, by the trustee, and
 - (ii) a lease or conditional sale thereof by the trustee to the corporation;
- (k) **debentures.**—the bonds, debentures or other evidences of indebtedness issued or guaranteed by,
 - (i) a corporation if, at the date of investment, the preferred shares or the common shares of the corporation are authorized as investments by clause (m) or (n), or
 - (ii) a corporation if its earnings in a period of five years ended less than one year before the date of investment have been equal in sum total to at least ten times and in each of any four of the five years have been equal to at least 1-1/2 times the annual interest requirements at the date of investment on all indebtedness of or guaranteed by it, other than indebtedness classified as a current liability in its balance sheet, and, if the corporation at the date of investment owns directly or indirectly more than 50 per cent of the common shares of another corporation, the earnings of the corporations during the said period of five years may be consolidated with due allowance for minority interests, if any, and in that event the interest requirements of the corporation shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the corporation, and, for the purpose of this subclause, “earnings” mean earnings available to meet interest charges on indebtedness other than indebtedness classified as a current liability;
- (l) **guaranteed investment certificates.**—guaranteed investment certificates is-

sued by a trust company incorporated in Canada if, at the date of investment, the preferred shares or the common shares of the trust company are authorized as investments by clause (m) or (n);

- (m) **preferred shares.**—the preferred shares of a corporation if,
- (i) the corporation has paid a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or
 - (ii) the common shares of the corporation are, at the date of investment, authorized as investments by clause (n);
- (n) **common shares.**—the fully paid common shares of a corporation that during a period of five years that ended less than one year before the date of investment has either,
- (i) paid a dividend in each such year upon its common shares, or
 - (i) had earnings in each such year available for the payment of a dividend upon its common shares,
- of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends, as the case may be;
- (o) **real estate mortgages.**—ground rents, mortgages, charges or hypothecs on real estate or leaseholds in Canada or in any country in which the insurer is carrying on business, but the amount paid for the mortgage, charge or hypothec together with the amount of indebtedness under any mortgage, charge or hypothec on the real estate or leasehold ranking equally with or prior to the mortgage, charge or hypothec in which the investment is made shall not exceed three-quarters of the value of the real estate or leasehold covered thereby;
- (p) **guaranteed or insured real estate mortgages.**—mortgages, charges or hypothecs on real estate or leaseholds in Canada or in any country in which the insurer is carrying on business or bonds or notes secured by such mortgages, charges or hypothecs, notwithstanding that the mortgage, charge or hypothec exceeds the amount that the insurer is otherwise authorized to invest, if the excess is guaranteed or insured by, or through an agency of, the government of the country in which the real estate or leasehold is situated or of a province or state of that country or is insured by a policy of mortgage insurance issued by an insurance company licensed under this Act, the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada);
- (q) **real estate for the production of income.**—real estate or leaseholds for the production of income in Canada or in any country in which the insurer is carrying on business, either alone or jointly with any other insurance company transacting

the business of insurance in Canada or with any loan corporation or trust company incorporated in Canada, if,

- (i) a lease of the real estate or leasehold is made to, or guaranteed by,
 - (A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state or municipality of that country, or
 - (B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by clause (m) or (n),
- (ii) the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least 85 per cent of the amount invested in the real estate or leasehold within the period of the lease but not exceeding thirty years from the date of investment, and
- (iii) the total investment of an insurer in any one parcel of real estate or in any one leasehold does not exceed 2 per cent of the book value of the total assets of the insurer,

and the insurer may hold, maintain, improve, lease, sell or otherwise deal with or dispose of the real estate or leasehold;

- (r) **other real estate for the production of income.**—real estate or leaseholds for the production of income in Canada or in any country in which the insurer is carrying on business, either alone or jointly with any other insurance company transacting the business of insurance in Canada or with any loan corporation or trust company incorporated in Canada, if,

- (i) the real estate or leasehold has produced in each of the three years immediately preceding the date of investment, net revenue in an amount that, if continued in future years, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least 85 per cent of that amount within the remaining economic lifetime of the improvements to the real estate or leasehold but not exceeding forty years from the date of investment, and
- (ii) the total investment of an insurer in any one parcel of real estate or in any one leasehold does not exceed 2 per cent of the book value of the total assets of the insurer,

and the company may hold, maintain, improve, lease, sell or otherwise deal with or dispose of the real estate or leasehold;

- (s) **credit union term deposits.**—term deposits accepted by a credit union as defined in the *Credit Unions and Caisses Populaires Act*.

(2) **Lending funds.**—An insurer may lend its funds or any portion thereof on the security of,

- (a) **authorized securities.**—any bonds, debentures or other evidences of indebt-

edness, shares or other securities in which the insurer may invest its funds under subsection (1) but the amount of the loan, together with the amount invested therein, if any, shall not exceed in the aggregate the amount that might be invested therein under this Part;

- (b) **real estate mortgages.**—real estate or leaseholds for a term of years or other estate or interest in real estate in Canada or in any country in which the insurer is carrying on business but the amount of the loan together with the amount of indebtedness under any mortgage, charge or hypothec on the real estate or interest therein ranking equally with or prior to the loan shall not exceed 75 per cent of the value of the real estate or interest therein, except that an insurer may accept as part payment for real estate sold by it a mortgage, charge or hypothec for more than 75 per cent of the sale price of the real estate or;
- (c) **guaranteed or insured real estate mortgages.**—real estate or leaseholds in Canada or in any country in which the insurer is carrying on business, notwithstanding that the loan exceeds the amount that the insurer is otherwise authorized to lend, if, to the extent of the excess, the mortgage, charge or hypothec thereon securing the loan is guaranteed or insured by, or through an agency of, the government of the country in which the real estate or leasehold is situated or of a province or state of that country or is insured by a policy of mortgage insurance issued by an insurance company licensed under this Act, the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada).

(3) **Securities received on reorganization, liquidation or amalgamation.**—Where an insurer owns securities of a corporation and as a result of an arrangement in good faith for the reorganization or liquidation of the corporation or for the amalgamation of the corporation with another corporation, such securities are to be exchanged for bonds, debentures or other evidences of indebtedness or shares not authorized as investments by the foregoing provisions of this section, the insurer may accept such bonds, debentures or other evidences of indebtedness or shares and they shall be allowed as assets of the insurer in the annual report prepared by the Superintendent for the Minister, only for a period of five years after their acceptance, or such further period as the Lieutenant Governor in Council determines, unless it is shown to the satisfaction of the Lieutenant Governor in Council that such bonds, debentures or other evidences of indebtedness or shares are not inferior in status or value to the securities for which they have been substituted or unless they become eligible as investments under subsection (1).

(4) **Other assets.**—An insurer may make investments or loans not hereinbefore authorized by this section subject to the following provisions,

- (a) **real estate for the production of income.**—investments in real estate or leaseholds under this subsection shall be made only for the production of income, and may be made by the insurer in Canada or in any country in which the insurer is carrying on business, either alone or jointly with any other insurance company

transacting the business of insurance in Canada, and the insurer may hold, maintain, improve, develop, repair, lease, sell or otherwise deal with or dispose of such real estate or leaseholds, but the total investment of an insurer under this subsection in any one parcel of real estate or in any one leasehold shall not exceed 1 per cent of the book value of the total assets of the insurer;

- (b) **exemption.**—this subsection shall be deemed not to enlarge the authority conferred by subsections (1) and (2) to invest in mortgages, charges or hypothecs and to lend on the security of real estate or leaseholds; and
- (c) **limitation.**—the total book value of the investments and loans made under this subsection and held by the insurer excluding those that are or at any time since acquisition have been authorized as investments apart from this subsection, shall not exceed 7 per cent of the book value of the total assets of the insurer.

(5) **Life insurance policies.**—An insurer licensed to transact the business of life insurance may invest or lend its life insurance funds or any portion thereof in the purchase of, or on the security of, policies of life insurance issued by the insurer or by any other insurance company licensed to transact the business of life insurance in Canada.

(6) **National Housing Acts.**—Despite anything in this Act or in any other Act, an insurer may,

- (a) lend its funds or any portion thereof on the security of real estate pursuant to the *National Housing Act* (Canada), or any amendments thereto, or may make loans on the security of real estate or leaseholds or other estate or interest therein in excess of 75 per cent of the value of the real estate or interest therein that forms the security for such loan or in excess of the amount that may be loaned in accordance with that Act, or any amendments thereto, where the amount of the excess is guaranteed by the Lieutenant Governor in Council or by a municipality under the *Housing Development Act*;
- (b) if it is licensed to transact the business of life insurance, cause to be formed, or may join with one or more insurance companies licensed to transact the business of life insurance in forming one or more institutional holding companies and one or more institutional housing corporations as defined in the *National Housing Act* (Canada), and may invest its funds in shares or debentures of such holding companies and in shares of such housing corporations to an aggregate amount that, when added to the aggregate amount invested by such insurer under clause (c), does not exceed 5 per cent of its total assets in Canada allowed by the Superintendent; and
- (c) if it is licensed to transact the business of life insurance, invest its funds to an aggregate amount not exceeding 5 per cent of its total assets in Canada allowed by the Superintendent in any other classes or types of investment pursuant to the *National Housing Act* (Canada), or any amendments thereto, including the purchase of land, the improvement thereof, construction of buildings thereon, and the management and disposal of such land and buildings.

(7) **Guaranteed loans.**—An insurer may make guaranteed loans and in accordance with the provisions of the *Canada Student Loans Act* (Canada), the *Farm Improvement Loans Act* (Canada), the *Fisheries Improvement Loans Act* (Canada) or the *Small Businesses Loans Act* (Canada).

(8) **Power to invest in shares of certain corporations.**—Despite anything in subsection (1), an insurer licensed under the laws of Ontario to transact the business of life insurance may invest its funds in the fully paid shares of,

- (a) any corporation incorporated outside Canada to undertake contracts of life insurance;
- (b) any corporation incorporated to provide the insurer or a corporation mentioned in clause (a) with advisory, management or sales distribution services in respect of life insurance contracts or annuities the reserves for which vary in amount depending on the market value of a specified group of assets maintained in a separate and distinct fund;
- (c) any corporation incorporated under the laws of Canada or any province thereof to undertake contracts of insurance other than contracts of life insurance;
- (d) any corporation incorporated to acquire, hold, maintain, improve, lease or manage real estate or leaseholds;
- (e) any corporation incorporated to offer public participation in an investment portfolio;
- (f) any corporation incorporated to provide a corporation mentioned in clause (e) with advisory, management or sales distribution services; or
- (g) with the prior approval of the Commissioner, any corporation incorporated to carry on any other business reasonably ancillary to the business of insurance,

subject to such terms and conditions as may be prescribed by the Lieutenant Governor in Council.

(9) **Same.**—Despite subsection (1) and section 435, a mutual insurance corporation that participates in the Fire Mutual Guarantee Fund may, with the approval of the Commissioner and subject to any terms and conditions he or she may impose, invest in the fully paid shares of a body corporate of a prescribed class incorporated in Canada if, after the investment, one or more of the mutual insurance corporations that participate in the Fund controls, or as a result of the investment will acquire control of, the body corporate.

(10) **Additional security may be taken.**—An insurer may take any additional securities of any nature to further secure repayment to it of any loan or investment or to further secure the sufficiency of any of the securities in or upon which it is by this section authorized to invest or lend any of its funds.

(11) **By-laws to prevail.**—Where the constitution, by-laws or rules of an insurer

prescribe the securities in which its funds may be invested, nothing in this section enlarges the power of investment.

(12) Disposal of unauthorized investments.—The Superintendent may direct an insurer to dispose of and realize any of its investments acquired after the 1st day of May, 1928, and not authorized by this Part, and such insurer shall within sixty days after receiving such direction absolutely dispose of and realize such investments, and, if the amount realized therefrom falls below the amount paid by such insurer for such investments, the directors of the insurer are jointly and severally liable for the payment to such insurer of the amount of the deficiency, but if any director present at the meeting at which such investment is authorized forthwith, or if any director then absent, within twenty-four hours after he or she becomes aware of such investment and is able to do so, delivers or sends to the insurer by registered mail his protest against such investment, and, within eight days thereafter, sends a copy thereof by registered mail to the Superintendent, such director thereby and not otherwise exonerates himself or herself from such liability. S.O. 1993, c. 10, s. 47; S.O. 1994, c. 11, s. 345(1), (2).

434. Investments of other insurers.—An insurer who is not a joint stock insurance company, a fraternal society, a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund, a mutual insurance corporation licensed to write life insurance or a cash-mutual insurance corporation, may invest its funds in securities described in clauses 433(1)(a) to (l) and (o), (p) and (s) and may lend its funds on the security of any such securities. S.O. 1994, c. 11, s. 346.

435. (1) Restrictions and limitations.—The following restrictions, limitations and prohibitions apply to insurers in the exercise of the investment powers under sections 433 and 434,

- (a) an insurer not licensed to transact the business of life insurance shall not invest in or lend its funds upon the security of its own shares or the shares of any corporation transacting the business of insurance except for investments in the shares of a syndicate that is a member of The Canadian Insurance Exchange;
- (b) an insurer licensed to transact the business of life insurance shall not,
 - (i) invest in the shares of a corporation incorporated in Canada to undertake contracts of life insurance,
 - (ii) lend its funds upon the security of its own shares, or
 - (iii) except as provided in section 211 of the *Corporations Act*, invest in or purchase its own shares;
- (c) except as to securities issued or guaranteed by the Government of Canada or the government of a province of Canada or a municipal corporation in Canada, an insurer shall not invest in any one security or make a total investment in any one corporation, either by the purchase of shares of other securities of such corporation or by lending to it on the security of its debentures or other assets or any part thereof, of more than 10 per cent of the book value of the total assets of the insurer;

- (d) except as to investments made under subsection 433(8) and as to securities guaranteed by the Government of Canada or the government of a province of Canada or by a municipal corporation in Canada, an insurer shall not make any investment the effect of which will be that it will hold more than 30 per cent of the common shares or 30 per cent of the total issued shares of any one corporation;
- (e) the total book value of the investments of an insurer in common shares, other than its own common shares purchased under section 211 of the *Corporations Act*, shall not exceed 25 per cent of the book value of the total assets of the insurer;
- (f) the total book value of the investments of an insurer in real estate or leaseholds for the production of income under clauses 433(1)(q) and (r) and subsection 433(4) shall not exceed 10 per cent of the book value of the total assets of the insurer;
- (g) an insurer shall not invest any of its funds in bonds, debentures or other evidences of indebtedness on which the payment of principal or interest is in default; and
- (h) an insurer shall not act as an underwriter in connection with the purchase or sale of any securities or other property of any kind.

(2) **Securities dealers.**—Subject to such terms and conditions as may be prescribed by the Lieutenant Governor in Council, an insurer, with the approval of the Superintendent, may invest its funds in the fully paid voting shares of a dealer within the meaning of the *Securities Act*.

(3) **Non-application of subs. (1)(c, d).**—Clauses (1)(c) and (d) do not apply to an investment under subsection (2).

(4) **Definition.**—For the purposes of this section and regulations made under paragraph 32 or subsection 121(1), “voting share” means a share of any class of shares of a corporation carrying voting rights under all circumstances and a share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing.

436. (1) Prohibited loans and investments.—An insurer shall not knowingly make an investment, after the 13th day of November, 1970, other than a loan on the security of a policy of life insurance issued by it,

- (a) by way of a loan to,
 - (i) a director or officer of the insurer, or a spouse or child of such director or officer, or
 - (ii) an individual, his spouse or any of his children under twenty-one years of age if either the individual or a group consisting of the individual, his spouse and such children is a substantial shareholder of the insurer;
- (b) in a corporation that is a substantial shareholder of the insurer; or

(c) in a corporation in which,

- (i) an individual mentioned in subclause (a)(i),
- (ii) an individual who is a substantial shareholder of the insurer,
- (iii) another corporation that is a substantial shareholder of the insurer, or
- (iv) a group consisting exclusively of individuals mentioned in subclause (a)(i), has a significant interest.

(2) **Disposition.**—An insurer shall not knowingly retain an investment mentioned in subsection (1).

(3) **Interpretation.**—For the purpose of this section,

(a) **significant interest.**—a person has a significant interest in a corporation, or a group of persons has a significant interest in a corporation if,

- (i) in the case of a person, he owns beneficially, either directly or indirectly, more than 10 per cent, or
- (ii) in the case of a group or persons, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent, of the shares of the corporation for the time being outstanding;

(b) **substantial shareholder.**—a person is a substantial shareholder of a corporation or a group of persons is a substantial shareholder of a corporation if that person or group of persons owns beneficially, either individually or together and either directly or indirectly, equity shares to which are attached more than 10 per cent of the voting rights attached to all of the equity shares of the corporation for the time being outstanding; and in computing the percentage of voting rights attached to equity shares owned by an underwriter, there shall be excluded the voting rights attached to equity shares acquired by him as an underwriter during the course of distribution to the public by him of such shares;

(4) **Definitions.**—In this section,

“equity share”.—“equity share” means a share of any class to which are attached voting rights exercisable under all circumstances and a share of any class to which are attached voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

“investment”.—“investment” means,

- (a) an investment in a corporation by way of purchase of bonds, debentures, notes or other evidences of indebtedness thereof or shares thereof, or
- (b) a loan to a person or persons,

but does not include any normal working balance between an insurer and any other corporation transacting the business of insurance or any advance or loan that is merely ancillary to the main business of the insurer; and

“officer”.—“officer”, despite its definition in section 1, means only the president, a vice-president, the secretary, the treasurer, the manager, the controller and the actuary of an insurer and any other person designated as an officer of the insurer by by-law or by resolution of the directors thereof.

(5) **“Downstream” investment.**—For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or is deemed by this subsection to own beneficially, shares of a corporation, that person or group of persons shall be deemed to own beneficially that proportion of the shares of any other corporation that is owned beneficially, directly or indirectly, by the first-mentioned corporation, that is equal to the proportion of the shares of the first-mentioned corporation that is owned beneficially, directly or indirectly, or is deemed by this subsection to be owned beneficially, by that person or group of persons.

(6) **Exception.**—Notwithstanding subsection (4), an insurer is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially equity shares of the insurer is, by reason of that subsection, deemed to own beneficially equity shares of such corporation.

(7) **Exemption.**—Where any person or group of persons is a substantial shareholder of an insurer and, as a consequence thereof and of the application of this section, certain investments are prohibited for the insurer, the Minister may, on the advice of the Superintendent, and on application by the insurer, exempt from such prohibition any particular investment or investments of any particular class if he is satisfied,

- (a) that the decision of the insurer to make or hold any investment so exempted has not been and is not likely to be influenced in any significant way by that person or group, and does not involve in any significant way the interests of that person or group apart from their interests as a shareholder of the insurer; and
- (b) that the investment is to be made under the power granted to the insurer under this Part.

(8) **Idem.**—Any order of exemption made by the Minister under subsection (7) may contain any conditions or limitations considered by the Minister to be appropriate and may be revoked by the Minister at any time.

437. (1) Investments in corporate name.—All investments and deposits of the funds of an insurer shall be made in its corporate name.

(2) **Assets in Canada.**—Every insurer shall at all times retain in Canada and under its own control assets of a value at least equal to its total liabilities to its policyholders in Canada.

(3) **Deposits outside Canada.**—Where the laws of any province, state or country in which any insurer transacts or is about to transact business require that the deposits made or to be made by such insurer in such province, state or country shall be made in the name of or transferred or assigned to any person or corporation other than the insurer, this section does not prohibit such insurer from making in the name of, or transferring or

assigning to, such other person or corporation the investments and deposits necessary to comply with the said laws.

(4) **Prohibition on directors or officers receiving fees or gifts.**—No director or officer of an insurer and no member of a committee having any authority in the investment or disposition of its funds shall accept or be the beneficiary of, either directly or indirectly, any fee, brokerage, commission, gift or other consideration for or on account of any loan, deposit, purchase, sale, payment or exchange made by or on behalf of such insurer, or be pecuniarily interested in any such purchase, sale or loan, either as borrower, principal, co-principal, agent or beneficiary, except that, if he is a policyholder, he is entitled to all the benefits accruing under the terms of his contract.

(5) **Securities to be held in Ontario.**—Except as in this section provided, all the securities of an insurer incorporated and licensed under the laws of Ontario shall be held at the head office of the insurer or elsewhere in Ontario and the holding of securities, wherever situated, is subject to such regulations respecting their safekeeping, including registration and the bonding of directors, officers and employees of the insurer, as the Lieutenant Governor in Council may prescribe.

PART XVIII

UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN THE BUSINESS OF INSURANCE

438. Definitions.—For the purposes of this Part,

“**person**”.—“person” includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd’s, fraternal society, mutual benefit society or syndicate;

“**unfair or deceptive acts or practices**”.—“unfair or deceptive acts or practices” includes,

- (a) the commission of any act prohibited under this Act or the regulations,
- (b) any unfair discrimination between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged by it for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable thereon or in the terms and conditions thereof,
- (c) any unfair discrimination in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification,
- (d) any illustration, circular, memorandum or statement that misrepresents, or by omission is so incomplete that it misrepresents, the terms, benefits or advantages of any policy or contract of insurance issued or to be issued,

- (e) any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued,
- (f) any incomplete comparison of any policy or contract of insurance with that of any other insurer for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract,
- (g) any payment, allowance or gift, or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure,
- (h) any charge by a person for a premium allowance or fee other than as stipulated in a contract of insurance upon which a sales commission is payable to such person,
- (i) any conduct resulting in unreasonable delay or resistance to the fair adjustment and settlement of claims,
- (j) making the issuance or variation of a policy of automobile insurance conditional on the insured having or purchasing another insurance policy,
- (k) when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use, or
- (l) any activity or failure to act that is prescribed as an unfair or deceptive act or practice. S.O. 1993, c. 10, s. 48.

439. Prohibition.—No person shall engage in any unfair or deceptive act or practice.

440. Superintendent may investigate.—The Superintendent may examine and investigate the affairs of every person engaged in the business of insurance in Ontario in order to determine whether such person has been, or is, engaged in any unfair or deceptive act or practice.

441. (1) Superintendent's orders.—If, in the opinion of the Superintendent, a person has committed or is committing any act, or has pursued or is pursuing any course of conduct, that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice, the Superintendent may give notice to the person of the Superintendent's intention to order the person,

- (a) to cease or refrain from doing any act or pursuing any course of conduct identified by the Superintendent;
- (b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Superintendent; or
- (c) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

(2) **Hearing.**—A person, by written notice served on the Superintendent within fifteen days after the service of the notice under subsection (1), may require a hearing before the Superintendent.

(3) **Interim order.**—Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim order as described in clause (1)(a), (b) or (c) which shall take effect immediately on its making, and which shall become permanent on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested.

(4) **When order may be made.**—If no hearing is requested within the time set out in subsection (2) or (3), or if a hearing is held and the Superintendent is of the opinion that an order described in clause (1)(a), (b) or (c) should be made, the Superintendent may make a permanent order under any of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

(5) **Hearing.**—A request for a hearing under subsection (3) shall be in writing and served on the Superintendent.

(6) **Extension of order.**—If a hearing is requested under subsection (3), the Superintendent may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

(7) **Modification or revocation.**—The Superintendent may, after giving the person named in the order an opportunity to be heard, modify or, without holding a hearing, revoke an order made under this section. S.O. 1993, c. 10, s. 49.

PART XIX

EXAMINATION AND REINFORCEMENT

442. Definition.—In this Part, “examination” means examination, inquiry, appraisal, audit or inspection under this Act.

443. (1) Examinations, general.—It is a condition of the licensing of a person that the person facilitate examinations.

(2) **Material to be furnished.**—For the purpose of an examination, the insurer, agent or adjuster shall prepare and submit to the person conducting the examination such statements or returns with respect to the insurer’s, agent’s or adjuster’s business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent may require.

(3) **Duty of officers, etc.**—The officers, agents and employees of an insurer, agent or adjuster shall open the books for inspection and shall otherwise facilitate an examination under this Act so far as it is in their power.

(4) **Production of books.**—In order to facilitate an examination of the books and records of an insurer, agent or adjuster, the Superintendent or a person designated by the Commissioner may require the insurer, agent or adjuster to produce the books and records at his, her or its principal place of business in Ontario, or at such other convenient place as the Superintendent may direct.

(5) **Expense of further examination.**—On the direction of the Superintendent or a person designated by the Commissioner, if an examination of an insurer is made at an office situate outside Ontario, the insurer shall pay the costs and expenses of the examination.

444. (1) Powers of examination, etc.—A person conducting an examination, for the purpose of carrying out that person's duties,

- (a) may enter any place at any reasonable time.
- (b) may require the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall return them within a reasonable time to the person who produced them; and
- (d) may question a person on matters that are or may be relevant to the carrying out of the examination.

(2) **Entry to dwellings.**—No person may exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

(3) **Warrant for search.**—Where a justice of the peace is satisfied on information upon oath that there are in a place documents or things that there are reasonable grounds to believe will afford evidence relevant to the carrying out of an examination under this Act, the justice of the peace may issue a warrant authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

(4) **Warrant for entry.**—Where a justice of the peace is satisfied on information upon oath that there are reasonable grounds to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a person may carry out an examination, the justice of the peace may issue a warrant authorizing such entry by the person named in the warrant.

(5) **Execution and expiry of warrant.**—A warrant issued under subsection (3) or (4),

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

(6) **Obstruction.**—No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede a person carrying out an examination.

(7) **Idem.**—Subsection (6) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (3).

(8) **Admissibility of copies.**—Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

445. (1) Reporting by auditor.—An auditor shall promptly report to the insurer and to the Superintendent any breach of this Act of which the auditor is aware or is made aware under subsection (2) and, if the insurer does not act to rectify the breach within thirty days, the auditor shall promptly report the failure to rectify to the Superintendent.

(2) **Reporting by others.**—Any person undertaking professional services for an insurer who, in providing the professional services, becomes aware of a breach of this Act shall promptly report the breach to the insurer and the auditor of the insurer or, if there is no auditor, to the Superintendent.

(3) **Solicitor-client privilege.**—Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

446. No liability.—A person who in good faith makes an oral or written statement or disclosure to the Commissioner, the Superintendent, an employee of the Commission or any other person acting under the authority of this Act that is relevant to the duties of the person to whom the statement or disclosure is made shall not be liable in any civil action arising out of the making of the statement or disclosure.

447. (1) Definition.—In this section and in section 448, “person” includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate.

(2) **Offences.**—Every person is guilty of an offence who,

(a) directly or indirectly furnishes false, misleading or incomplete information to the Commission or to an organization recognized under subsection 393(14) whether the information is required under this Act or is volunteered;

(a.1) knowingly makes a false or misleading statement or representation to an insurer in connection with the person's entitlement to a benefit under a contract of insurance;

(a.2) wilfully fails to inform an insurer of a material change in circumstances in connection with the person's entitlement to a benefit under a contract of insurance within 14 days of the material change;

(a.3) knowingly makes a false or misleading statement or representation to an insurer

in order to obtain payment for goods or services provided to an insured, whether or not the insured received the goods or services.

- (b) fails to comply with any requirement of, or any order or direction made under, this Act;
- (c) fails to comply with any written undertaking given to the Commissioner or the Superintendent or to an organization recognized under subsection 393(14);
- (d) contravenes this Act or the regulations; or
- (e) contravenes any term, condition or restriction imposed by a licence.

(3) **Penalty.**—On conviction for an offence under this Act, the person convicted is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000.

(4) **Derivative.**—Every director, officer and chief agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who,

- (a) caused, authorized, permitted or participated in the corporation or unincorporated association committing an offence referred to in subsection (2); or
- (b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence referred to in subsection (2),

is guilty of an offence and is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of the offence.

(5) **Restitution.**—Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto. S.O. 1993, c. 10, s. 50; S.O. 1994, c. 11, s. 347(1), (2); S.O. 1996, c. 21, s. 49.

448. (1) Order for compliance.—If it appears to the Superintendent that any person has failed to comply with or is not complying with,

- (a) any provision of this Act or the regulations
- (a.1) any order, decision, direction or inquiry made under this Act;
- (b) any undertaking given; or
- (c) any term, condition or restriction imposed on its licence, where applicable,

the Superintendent may, in addition to any other rights under this Act, apply to a judge of the Ontario Court (General Division) for an order directing the person to comply with or restraining the person from violating the provision, order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

(1.1) **Life insurance.**—An application under subsection (1) may be made by an organization recognized under subsection 393(14) in respect of a person who holds a licence within the class of licences referred to in clause 393(2)(a).

(2) **Appeal.**—An appeal lies to the Divisional Court from an order made under subsection (1). S.O. 1993, c. 10, s. 51(1), (2); S.O. 1994, c. 11, s. 348.

449. Limitation period.—No proceeding for an offence under this Act may be commenced more than two years after the earlier of the date on which the facts upon which the proceedings are based first came to the knowledge of the Commissioner or the Superintendent.

SCHEDULE A

(Section 154)

PREMIUM NOTE

(Place)

(Date)

In consideration of insurance granted under Policy No. I hereby promise to pay the Company at (*place of payment*) the sum of dollars, as follows: on day of, 19 in full cash payment dollars

— or —

on day of, 19, 1st instalment of cash payment dollars;
 on day of, 19, 2nd instalment of cash payment dollars;
 on day of, 19, 3rd instalment of cash payment dollars;

— and —

upon notice such further sums not exceeding, in the aggregate, the face amount of this note as may be lawfully assessed hereon by the directors of the said Company under the *Insurance Act*.

An action that may be brought or commenced in a small claims court in respect or on account of this note, or any sum to be assessed thereon, may be brought and commenced against the maker hereof in the small claims court for the division in which the head office or an agency of the insurer is located.

\$

.....
 Signature of Insured

.....
 Post Office Address

SCHEDULE B

(Section 108)

MINIMUM STANDARDS OF VALUATION OF

LIFE INSURANCE CONTRACTS

1. As respects benefits depending upon life contingencies only in or arising out of policies of life insurance, other than industrial policies and excluding life annuity settlements, the basis of valuation for any particular class or group of policies shall be an assumed rate of interest not exceeding $3\frac{1}{2}$ per cent per annum and one of the tables of mortality specified below, or any other table that is approved by the Superintendent.

Tables of Mortality

- (i) American Experience Table, Am. Exp.
- (ii) Institute of Actuaries of Great Britain, H^m
- (iii) British Offices Life Tables, 1893, O^M(5)
- (iv) Canadian Men Table, C^m(5)
- (v) American Men Table, A^M(95)
- (vi) Mortality of Assured Lives, A 1924-29
- (vii) Commissioners 1941 Standard Ordinary Mortality Table, 1941 CSO
- (viii) Commissioners 1958 Standard Ordinary Mortality Table, 1958 CSO

The value of the policy as of any date after issue shall be the difference between the then value of the sum assured thereunder (including the then value of any bonus or addition thereto, or reduction in future premiums, made after the date of issue of the policy and subsisting as at the date of valuation), and the then value of the valuation premiums (as hereinafter defined) assumed to be payable on each anniversary of the policy following the date of valuation during the term for which premiums are required to be paid in accordance with the terms of the policy to be valued.

If the net level premium for the life insurance risks incurred by the company in issuing the policy does not exceed the whole life net level premium for a like amount of whole life insurance, the valuation premium shall be the net level premium for a life policy as of an age one year greater than the age at entry assumed to be payable at the beginning of the second and each subsequent policy year for which premiums are payable under the terms of the policy to be valued.

If the net level premium for the life insurance risks incurred by the company in issuing the policy exceeds the net level premium payable throughout life for a like amount of

whole life insurance, the valuation premium shall be obtained by adding to each net level annual premium, excluding the first, such an amount, assumed to be payable at the beginning of the second and each subsequent policy year for which premiums are payable under the terms of the policy to be valued, as is equal in value as of the date of issue of the policy to the difference between the net level premiums payable throughout life for a whole life policy and the one-year term premium for, in each case, a policy of like amount and of the same age at entry as the policy to be valued.

2. As respects benefits depending upon life contingencies only in or arising out of industrial life insurance policies, excluding life annuity settlements, the basis of valuation for any particular class or group of policies shall be an assumed rate of interest not exceeding $3\frac{1}{2}$ per cent per annum and one of the tables of mortality specified below, or any other table that is approved by the Superintendent.

Table of Mortality

- (i) Any of the Tables named under paragraph 1 above.
- (ii) The Standard Industrial Table.
- (iii) 1941 Standard Industrial Mortality Table, 1941 SI.

No reserve shall be held at any valuation within the first year after issue of any policy. In valuations thereafter the insurance risks of the first policy year shall be ignored, and, for valuation purposes, the date of issue of the policy shall be assumed to be one year after the actual date of issue, the age at issue shall be assumed to be one year greater than the actual age at issue, and the premium terms shall be assumed to commence as of the assumed date of issue and to be co-terminous with the premium term stated in the policy to be valued.

The valuation premium shall be such a level premium as of the assumed age at issue, payable for the assumed premium term, as is equal in the then present value to the insurance risks incurred by the Company as from the attainment of the assumed age at issue.

In valuations made as of any date after the attainment of the assumed age at issue, the value of the policy shall be the difference between the then value of the sums assured (including the then value of any bonus or addition thereto, or reduction in future premiums, made after the date of issue of the policy and subsisting as of the date of valuation) and the then value of the valuation premium assumed to be payable following the date of valuation during the term for which premiums are required to be paid in accordance with the terms of the policy.

If the terms of any particular class or group of policies are such that the above method of valuation appears to be inapplicable or inappropriate, adaptations in the above method may be made, subject to the approval of the Superintendent.

3. As respects immediate or deferred life annuities, including life annuity settlements (other than disability annuities) arising out of policies of life insurance, the bases of valuation shall be an assumed rate of interest not exceeding 4 per cent per annum and one of the tables of mortality specified below, male or female, according to the sex of the nominee, or any other table of mortality that is approved by the Superintendent.

Tables of Mortality

- (i) Mortality of Annuitants, 1900-1920, a(f) and a(m).
- (ii) 1937 Standard Annuity Table.
- (iii) The a-1949 Table (Annuity Table for 1949).
- (iv) The a(55) Tables for Annuitants.

In the valuation of deferred annuities, the method of valuation shall be the net level premium method, subject to such adaptations as the Superintendent considers appropriate in any case where the premium may not be uniform throughout the premium-paying period.

4. As respects future payments dependent on a term certain only, including term-certain annuities arising out of policies of life insurance, the valuation shall be made at a rate of interest not exceeding 4 per cent per annum, and the method of valuation shall be the net level premium method, subject to such adaptations as the Superintendent considers appropriate in any case where the premium for the policy may not be uniform throughout the premium-paying period.

5. Policies other than those at uniform annual premiums for a uniform amount of insurance throughout shall be valued on bases determined in accordance with the foregoing provisions with such adaptations in the valuation methods as seem to the Superintendent appropriate in the circumstances.

6. Where a policy of life insurance provides for accident or sickness insurance benefits, the Superintendent may prescribe the basis for valuing such benefits.

SCHEDULE C

*MANDATORY MEDICAL AND
REHABILITATION BENEFITS, AND
ACCIDENT BENEFITS IN
MOTOR VEHICLE LIABILITY POLICIES

ACCIDENT BENEFITS SECTION

The insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile:

SUBSECTION 1 — MEDICAL,
REHABILITATION AND
FUNERAL EXPENSES

1. All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, chiropractic, hospital, professional nursing and ambulance service and for any other service within the meaning of insured services under the *Health Insurance Act* and for such other services and supplies which are, in the opinion of the physician of the insured person's choice and that of the Insurer's medical advisor, essential for the treatment, occupational retraining or rehabilitation of said person, to the limit of \$25,000 per person.

2. Funeral expenses incurred up to the amount of \$1,000 in respect of the death of any one person.

The Insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.

SUBSECTION 2 — DEATH BENEFITS AND
LOSS OF INCOME PAYMENTS

Part I — Death Benefits

A. Subject to the provisions of this Part, for death that ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous disability

* Schedule C was repealed by S.O. 1990, c. 2, s. 80, in force June 22, 1990. Schedule C and all prior *Act* provisions are continuing for entitlements incurred prior to the coming into force of the repeal of Schedule C, pursuant to s. 224 R.S.O. 1990, c. 1.8.

during that period, a payment — based on the status at the date of the accident of the deceased in a household where a spouse or dependants survive — of the following amounts:

Head of the Household	\$10,000
Spouse of the Head of the Household	10,000
Dependant within the meaning of sub-subparagraph b of subparagraph 3 of paragraph B	2,000

In addition, with respect to death of the head of the household, where there are two or more survivors — spouse or dependants — the principal sum payable is increased \$1,000 for each survivor other than the first.

B. For the purposes of this Part,

- (1) “Spouse of the head of the household” means the spouse with the lesser income from employment in the twelve months preceding the date of the accident.
- (2) “Spouse” means either of a man and woman who,
 - (a) are married to each other;
 - (b) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or
 - (c) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year,and includes
 - (d) either of a man and woman not being married to each other who have cohabited,
 - (i) continuously for a period of not less than five years, or
 - (ii) in a relationship of some permanence where there is a child born of whom they are the natural parents,and have so cohabited within the preceding year.
- (3) “Dependant” means,
 - (a) the spouse of the head of the household who resides with the head of the household;
 - (b) a person
 - (i) under the age of 18 years who resides with and is principally dependent upon the head of the household or the spouse of the head of the household for financial support.
 - (ii) 18 years of age or over who, because of mental or physical infirmity, is

principally dependent upon the head of the household or the spouse of the head of the household for financial support, or

- (iii) 18 years of age or over who, because of full-time attendance at a school, college or university, is principally dependent upon the head of the household or the spouse of the head of the household for financial support; or

(c) a parent or relative,

- (i) of the head of the household, or

- (ii) of the spouse of the head of the household,

residing in the same dwelling premises and principally dependent upon the head of the household or the spouse of the head of the household for financial support.

- (4) The total amount payable shall be paid to a person who is the head of the household or the spouse of the head of the household, as the case may be, if that person survives the deceased by at least 30 days.
- (5) The total amount payable with respect to death where no head of the household or spouse survives the deceased at least 30 days shall be divided equally among the surviving dependants.
- (6) No amount is payable on death, other than incurred funeral expenses, if no head of the household or dependant survives the deceased by at least 30 days.

Part II — Loss of Income

Subject to the provisions of this Part, a weekly payment for the loss of income from employment for the period during which the insured person suffers substantial inability to perform the essential duties of his occupation or employment, provided,

- (a) such person was employed at the date of the accident;
- (b) within 30 days from the date of the accident the insured person suffers substantial inability to perform the essential duties of his occupation or employment;
- (c) no payments shall be made for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to make such weekly payments for the duration of such inability to perform the essential duties.

Amount of Weekly Payment — The amount of a weekly payment shall be the lesser of,

- (a) \$140 per week; or

- (b) 80 per cent of the insured person's gross weekly income from employment, less any payments for loss of income from employment received by or available to such person under,
- (i) the laws of any jurisdiction,
 - (ii) wage or salary continuation plans available to the person by reason of his employment, and
 - (iii) Part III of this subsection (2),
- but no deduction shall be made for any increase in such payment due to a cost of living adjustment subsequent to the insured person's substantial inability to perform the essential duties of his occupation or employment or for the first two weeks of such substantial inability.

For the purpose of this Part,

- (1) there shall be deducted from an insured person's gross weekly income any payments received by or available to him from part-time or other employment or occupation subsequent to the date of the accident;
- (2) a principal unpaid housekeeper residing in the household not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of \$70 per week for not more than 12 weeks;
- (3) a person shall be deemed to be employed,
 - (a) if actively engaged in an occupation or employment for wages or profit at the date of the accident; or
 - (b) if 18 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months;
- (4) a person receiving a weekly payment who, within 30 days of resuming his occupation or employment is unable to continue such occupation or employment as a result of such injury, is not precluded from receiving further weekly payments;
- (5) except for the first two weeks of disability where the payments for loss of income payable hereunder, together with payments for loss of income under another contract of insurance other than a contract of insurance relating to any wage or salary continuation plan available to an insured person by reason of his employment, exceed the actual loss of income of the insured person, the insurer is liable only for that proportion of the payments for loss of income stated in this policy that the actual loss of income of the person insured bears to the aggregate of the payments for loss of income payable under all such contracts.

Part III — Supplemental Benefits
respecting Accidents occurring in Quebec

A. For the purposes of this Part,

- (a) “accident” means an event occurring in Quebec resulting in damage caused by an automobile, or by the use of an automobile, or by the load of an automobile, including damage caused by a trailer;
- (b) “bodily injury” means physical, psychological or mental injury including death as well as damage to the clothing worn by the victim at the time of the accident;
- (c) “resident of Ontario” means any person,
 - (i) who is authorized by law to be or to remain in Canada and is living and ordinarily present in Ontario, and
 - (ii) who meets the criteria prescribed in Division II of O.C. 374-78 made under the *Automobile Insurance Act* (Quebec), which apply with necessary modifications,but does not include a person,
 - (iii) who is merely touring, passing through or visiting Ontario, or
 - (iv) who is, at the time of an accident in Quebec, the owner or driver of, or a passenger in, an automobile registered in Quebec;
- (d) “person insured in Quebec” means a resident of Ontario who is,
 - (i) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy,
 - (ii) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile,
 - (iii) any person, not the occupant of an automobile, who is struck by the described automobile or a newly acquired or temporary substitute automobile as defined in this policy,
 - (iv) the named insurer, if an individual, and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile who is struck by any other automobile,
 - (v) if the insured is a corporation, unincorporated association, or partnership, any employer or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile,
 - (vi) any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile who is struck by any other automobile, and
 - (vii) any other person who is,

- a. the occupant of an automobile, or
- b. not being the occupant of an automobile, is struck by an automobile, driven by a person insured in Quebec as defined in sub-subparagraphs (i) to (vi) of this subparagraph.

B. With respect to bodily injury, as a result of an accident, to a person insured in Quebec the insurer agrees to make payments under this Part in the same amount and form and subject to the same conditions as if such person were a resident of Quebec as defined in the *Automobile Insurance Act* (Quebec) and the regulations made under that Act and entitled to payments under that Act and those regulations.

SUBSECTION 3 — SPECIAL PROVISIONS,
DEFINITIONS, AND
EXCLUSIONS OF THIS SECTION

(1) “*Insured person*” defined

In this Section, the words “insured person” mean,

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that,
 - (i) the insured is an individual or are husband and wife;
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;
 - (iv) such other automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
 - (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsections (1) and (2) of this section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
- (d) in subsections (1) and (2) of this section only, the named insured, if an individual

and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,

- (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured;
 - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
- (e) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile of the private passenger or station wagon type; and
- (f) in subsections (1) and (2) of this section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is truck by any other automobile; provided that,

in respect of (e) and (f) above,

- (i) neither such employee nor partner or his or her spouse is the owner of an automobile of the private passenger or station wagon type;
- (ii) the described automobile is of the private passenger or station wagon type;
- (iii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
- (iv) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner;
- (v) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured;

in respect of (e) above only,

- (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(2) *Exclusions*

- (a) Except as provided in Part III of subsection (2), the Insurer shall not be liable under this section for bodily injury to or death of any person,
 - (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
 - (ii) who is entitled to receive the benefits of any workmen's compensation law or plan; or
 - (iii) caused directly or indirectly by radioactive material;
- (b) The Insurer shall not be liable under subsection (1) or Part II of subsection (2) of this section for bodily injury or death,
 - (i) sustained by any person who is convicted of drunken or impaired driving or of driving while under the influence of drugs at the time of the accident; or
 - (ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

(3) *Notice and proof of claim*

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, within 30 days from the date of the accident or as soon as practicable thereafter;
- (b) within 90 days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;
- (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practice.

(4) *Medical reports*

The Insurer has the right and the claimant shall afford to the Insurer, an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

(5) *"Physician" defined*

"Physician" means a legally qualified medical practitioner.

(6) *Release*

Notwithstanding any release provided for under the relevant sections of the *Insurance Act* the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

(7) *When moneys payable*

- (a) All amounts payable under this section, other than benefits under Part II of subsection (2), shall be paid by the Insurer within 30 days after it has received proof of claim. The initial benefits for loss of time under Part II of subsection (2) shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.
- (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 of this subsection are complied with, nor until the amount of the loss has been ascertained as provided in this Section.
- (c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

(8) *Limitation on benefit payable*

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection (1) or (2), he or his personal representative or any person claiming through or under him or by virtue of Part V of the *Family Law Reform Act*, may recover only an amount equal to one benefit.

In so far as applicable the general provisions, definitions, exclusions and statutory conditions of the policy also apply.

DISPUTE RESOLUTION PRACTICE CODE

PART A — MEDIATION

1. **Application for Appointment of a Mediator**

- 1.1 Either the insured person or the insurer, under subsection 280 (1) of the *Insurance Act*, may access the mediation process where there is any matter in dispute in respect of the insured person's entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which the insured person is entitled.
- 1.2 The party seeking mediation shall file with the Commission,
 - (a) an **Application for Appointment of a Mediator**, and
 - (b) a copy of the insurer's written assessment of the claim provided by the insurer to the insured person, if any.
- 1.3
 - (a) The **Application for Appointment of a Mediator** shall be in Form 1.
 - (b) Form 1 shall include a general description of the matters and issues in dispute.
 - (c) Where the **Application** is made by the insurer, the insurer shall include the name, address and telephone number of the representative authorized to bind the insurer.

2. **Appointment of a Mediator**

- 2.1 Upon receipt of an **Application for Appointment of a Mediator**,
 - (a) the Commission shall provide a copy of the **Application** to the other parties; and
 - (b) the Director shall appoint a mediator.
- 2.2 Where the **Application** is made by the insured person, the insurer, upon receipt of the **Application**, shall provide the Commission with,
 - (a) the name, address and telephone number of the representative authorized to bind the insurer; and
 - (b) a copy of the insurer's written assessment of the claim, if it was not included with the **Application**.

3. **The Mediation Process**

- 3.1 A mediator, under subsection 280 (4) of the *Insurance Act*, is required to enquire into the issues in dispute and attempt to effect a settlement of as many of the issues as possible.

- 3.2 Mediation services may be provided over the telephone or in person or in any other manner as may be appropriate in the circumstances in the opinion of the mediator.
- 3.3 Subject to Section 6.1, all statements made during mediation are made without prejudice to any position the parties may wish to take subsequently in any court proceeding or the arbitration process.
- 4. Time Limits for the Completion of Mediation**
- 4.1 Subject to Section 4.2, a mediator is required to attempt to effect a settlement of a dispute within sixty (60) days after the date on which the **Application for Appointment of a Mediator** is filed.
- 4.2 The parties,
- (a) may agree to extend the time for the completion of the mediation process, even if the time for completion has expired; and
 - (b) where there is an extension of time, shall inform the Commission of the extension, and confirm it in writing.
- 5. Failure of Mediation**
- 5.1 Mediation has failed with respect to an issue when no settlement has been reached and,
- (a) the mediator, being of the opinion that mediation will fail, gives notice to the parties to that effect;
 - (b) the time limit set out in Section 4.1 or the agreed time as provided in Section 4.2 for mediation has expired; or
 - (c) the insured person makes a request for a **Report of Mediator** indicating that mediation has failed.
- 6. Report of Mediator**
- 6.1 If all or any of the issues in dispute are resolved,
- (a) the mediator shall record in the **Report of Mediator** the issues that have been settled, and the amounts that have been agreed upon, including any applicable interest; and
 - (b) the parties shall confirm all settlements and agreements set out in the **Report**.
- 6.2 If mediation fails,
- (a) the insurer shall provide in writing to the mediator the last offer of settlement of the insurer on any issue that remains in dispute; and

- (b) the mediator shall describe in the **Report of Mediator** the issues that remain in dispute and shall include the last offer of settlement of the insurer.
- 6.3
 - (a) The **Report of Mediator** shall be in Form 2.
 - (b) The parties shall confirm settlements and agreements as required under Section 6.1 in Form 3.
- 6.4 The Commission shall provide a copy of the **Report of Mediator** to the parties.
- 7. **Obligations of Insurer**
- 7.1 If mediation fails, the insurer, under subsections 281 (3) and (4) of the *Insurance Act*, shall pay,
 - (a) no-fault benefits in accordance with the last offer of settlement that it had made before the failure, until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director; and
 - (b) a no-fault benefit that the insurer is required to pay under subsection 232(8) of the *Insurance Act* in accordance with the last offer made by the insurer before the failure, until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director, if the insured has not commenced a proceeding in a court or an arbitration proceeding within forty-five (45) days after the day mediation failed.

PART B — ARBITRATION

- 8. **Application for Appointment of an Arbitrator**
- 8.1 Provided that mediation has first been sought and has failed, an insured person, under subsections 281 (1) and (2) of the *Insurance Act*, may,
 - (a) bring a proceeding in a court; or
 - (b) access the arbitration process.
- 8.2 An insured person seeking arbitration shall,
 - (a) file with the Commission an **Application for Appointment of an Arbitrator**, and
 - (b) pay a filing fee of fifty dollars (\$50).
- 8.3
 - (a) The **Application for Appointment of an Arbitrator** shall be in Form 4.
 - (b) Form 4 shall include a description of the issues upon which the **Application** is based, including the reasons for contesting the insurer's denial of benefits, and a description of the remedy sought by the insured person.

- (c) The insured person may include a response to the issues set out in the **Report of Mediator**.

8.4 The failure of an insured person to raise an issue or other matter in the **Application for Appointment of an Arbitrator**, or a **Reply** made under Section 12, and which is not set out in the **Report of Mediator**, may result in a delay in having a matter arbitrated.

9. Appointment of an Arbitrator

- 9.1 Upon receipt of an **Application for Appointment of an Arbitrator**,
- (a) the Commission shall provide a copy of the **Application** to the other parties; and
 - (b) the Director shall appoint an arbitrator.
- 9.2 A party, under subsection 282 (12) of the *Insurance Act*, may apply to the Director for the appointment of a new arbitrator if the party believes that the arbitrator is biased and the Director shall determine the issue.

10. The Arbitration Process

- 10.1 An arbitrator, under subsection 282 (3) of the *Insurance Act*, is required to determine all issues in dispute and such other issues as the parties may agree.
- 10.2
- (a) An arbitration must be by way of oral hearing unless the parties waive their rights to an oral hearing of the arbitration.
 - (b) A party must waive their rights to an oral hearing of the arbitration in writing.
- 10.3 An arbitration proceeding, under subsection 281 (5) of the *Insurance Act*, must be commenced within two (2) years after the insurer's refusal to pay the benefit claimed or within such longer period as may be provided in the *No-Fault Benefits Schedule*.
- 10.4 Each insurer that is a party to the arbitration shall pay one thousand dollars (\$1000) in respect of the arbitration.

11. Response by Insurer

- 11.1 The insurer shall complete and serve a **Response** on the insured person and any other parties within fourteen (14) days of having received the **Application for Appointment of an Arbitrator**.
- 11.2 The **Response by Insurer** shall be in Form 5.
- (a) Form 5 shall include,

- (i) a response to the issues raised by the insured person in the **Application**, including the reasons for the insurer's denial of benefits;
 - (ii) a description of the remedy sought by the insurer; and
 - (iii) a response to the issues set out in the **Report of Mediator**;
 - (iv) a statement whether the insurer waives an oral hearing of the arbitration.
- (b) An insurer shall respond to all issues and other matters raised in the **Application for Appointment of an Arbitrator** and to the issues set out in the **Report of Mediator**.
- (c) An insurer will not be permitted to raise an issue or other matter not set out in the **Response** or **Report of Mediator** except with leave of the arbitrator.

11.3 The insurer shall file the **Response** and proof of service with the Commission.

12. Reply by Insured Person

12.1 Within ten (10) days of having been served with the **Response**, the insured person,

- (a) may file a **Reply** to the **Response** of the insurer; or
- (b) shall file a **Reply** to the **Response** if the parties have waived an oral hearing of the arbitration.

12.2 Where the insured person makes a **Reply**, he or she shall serve the **Reply** on the insurer and any other parties and shall file proof of service with the Commission.

12.3 (a) The **Reply by Insured Person** shall be in Form 6.

- (b) Form 6 shall include a reply to each issue and other matter raised in the **Response**, and a statement whether the insured person waives an oral hearing of the arbitration.

13. Time Limits for the Completion of the Arbitration

13.1 If the parties waive an oral hearing of the arbitration,

- (a) the arbitrator may request further materials or written submissions on any issue or matter in the dispute from the parties, and if the arbitrator does so, he or she is required,
 - (i) to make the request within thirty (30) days after the last day on which the insured person is entitled to file a **Reply**, and
 - (ii) to complete the arbitration on the later of, thirty (30) days after the last day on which the insured person is entitled to file a **Reply**, and fifteen (15) days after the last day on which the parties are required to file their further materials or written submissions; or

- (b) the arbitrator is required to complete the arbitration within thirty (30) days after the last day on which the insured person is entitled to file a **Reply**.

13.2 If the parties have not waived an oral hearing of the arbitration,

- (a) the Director shall set a date for the oral hearing of the arbitration which shall not be more than sixty (60) days after the last day on which the insured person is entitled to file a **Reply**; or
- (b) where the Director is satisfied that necessary medical and rehabilitation evidence will not be available within the time frame set out in (a), the Director shall set a date for the oral hearing of the arbitration when the necessary evidence will be available.

13.3 The arbitrator shall make the arbitration order promptly following the date the arbitration is completed and submit it to the Commission.

14. **Waiver of Oral Hearing of the Arbitration**

14.1 Where the parties have waived an oral hearing of the arbitration, the arbitrator,

- (a) may request the parties to file with the Commission further materials or written submissions on any issue or matter in the dispute;
- (b) shall make the arbitration order based on the materials and submissions filed with the Commission.

14.2 (a) The arbitrator may proceed with an arbitration even though a party has failed to file further materials or written submissions if the arbitrator is satisfied that the party has received the request for further materials or written submissions.

- (b) An arbitration order shall not be made against a party solely on the failure of a party to submit further materials or written submissions.

15. **Notice of Arbitration Hearing**

15.1 (a) The Commission shall give the parties notice of an oral hearing of the arbitration.

- (b) The **Notice of Arbitration Hearing** shall include,
 - (i) the date, time, place and purpose of the hearing;
 - (ii) the name of the arbitrator;
 - (iii) a reference to the authority under which the hearing will be held; and
 - (iv) a statement that, if the party notified fails to submit materials and submissions or to attend at the hearing, the arbitrator may proceed and dispose of the case in the party's absence and he or she will not be entitled to any further notice of the arbitration proceedings.

- 15.2 (a) Once a date has been set for a hearing and a **Notice** has been issued, a party may request an adjournment of the hearing by filing a request in writing with the Commission.
- (b) The Director may decide the matter, or he or she may direct an arbitrator to determine the request.
- (c) The Director, or the arbitrator, may determine the request on the record.
- 15.3 (a) Where a **Notice** has been given to a party and the party does not attend at the hearing, the arbitrator may proceed with the arbitration in the absence of the party and he or she is not entitled to any further notice in the proceedings.
- (b) An arbitration order shall not be made against a party solely on the failure of a party to attend at the hearing.

16. Consolidation and Severability of Applications

- 16.1 Where the Director, or arbitrator, considers it advisable, or where the parties agree and the Director, or arbitrator, approves, the Director, or arbitrator, may order that two or more **Applications for Appointment of an Arbitrator** be consolidated, or be heard together, on such terms and conditions as the Director, or arbitrator, may direct.
- 16.2 In determining whether **Applications** should be consolidated, or be heard together, the Director, or arbitrator, shall consider,
- (a) whether each **Application** arises out of the same incident;
- (b) whether the **Applications** have questions of fact or law in common; and
- (c) such other matters as the Director, or arbitrator, may consider proper in the circumstances.
- 16.3 Where the Director, or arbitrator, considers it advisable, or where the parties agree and the Director, or arbitrator, approves, the Director, or arbitrator, may order that an **Application for Appointment of an Arbitrator** be severed into distinct issues whereby the arbitrator can make an arbitration order with respect to each distinct issue in dispute separately from the other issues in dispute.
- 16.4 In determining whether the **Application** should be severed, the Director, or arbitrator, shall consider,
- (a) whether having to deal with all issues in dispute in a single hearing causes any benefit or prejudice to the parties; and
- (b) such other matters as the Director, or arbitrator, may consider proper in the circumstances.

- 16.5 Where more than one order is issued under Section 16.3 with respect to an **Application**, then each order shall stand on its own for purposes of an appeal, a variation/revocation proceeding, or judicial review.

17. Pre-Hearing Discussion

- 17.1 (a) The Director may require the parties to participate in a pre-hearing discussion for the purpose of,
- (i) identifying and obtaining agreement as to the issues for arbitration;
 - (ii) obtaining agreement as to facts;
 - (iii) ensuring the exchange of all relevant documents;
 - (iv) resolving by agreement any preliminary objections and procedural problems;
 - (v) attempting to settle the dispute; and
 - (vi) dealing with any other matter which may arise.
- (b) A pre-hearing discussion may be chaired by the arbitrator named in the **Notice of Arbitration Hearing** or some other arbitrator as the Director may decide.
- (c) A pre-hearing discussion may be held by telephone or in person or in any other manner as may be appropriate in the circumstances in the opinion of the arbitrator.
- (d) Only persons authorized to enter into a memorandum of agreement may participate in the pre-hearing discussion.
- 17.2 A memorandum of agreement shall include the matters dealt with at the pre-hearing discussion, and where a dispute is settled, a settlement order may be issued.
- 17.3 The Commission shall provide a copy of the memorandum of agreement to the parties.

18. Evidence

- 18.1 The arbitrator shall judge the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence is not necessary.
- 18.2 Notwithstanding Section 18.1, the arbitrator shall not admit evidence at a hearing,
- (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - (b) that is inadmissible under the *Insurance Act*.
- 18.3 A party who intends to introduce at a hearing a report by an expert shall file a copy of the report with the Commission, and serve a copy on the other parties not less than seven (7) days before the first day of hearing, or upon such terms of notice as the arbitrator may direct, and shall include the name, address and qualifications of the expert who prepared the report.

- 18.4 A party who intends to call an expert witness at a hearing shall notify the Commission and the other parties not less than seven (7) days before the first day of hearing, or upon such terms of notice as the arbitrator may direct, of,
- (a) the name of the expert witness,
 - (b) the subject matter of the witness' testimony, and
 - (c) the substance of the facts and opinion to which the witness will testify.
- 18.5 Under section 22(1) of the *Insurance Act*,
- (a) for the purpose of exercising the powers and performing their duties, the arbitrator has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court of Ontario for the trial of civil actions;
 - (b) an arbitrator may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath;
 - (c) the evidence and proceedings in any matter before an arbitrator may be reported by a stenographer who has taken an oath before the person to report the evidence and proceedings faithfully;
 - (d) an arbitrator may administer and certify an oath required under the *Insurance Act*.
- 19. Questions Related to the Medical Condition or Treatment of the Insured Person or Related to Rehabilitation**
- 19.1 (a) The arbitrator, upon his or her own motion or at the request of a party, may pose questions to the Director related to the medical condition or treatment of the insured person or related to the insured person's rehabilitation.
- (b) The Director shall forthwith refer such questions to the Chair of the Medical and Rehabilitation Advisory Panel.
- 19.2 The Chair of the Medical and Rehabilitation Advisory Panel,
- (a) may seek clarification of the questions referred by the Director;
 - (b) shall refer the questions to one or more medical/rehabilitation advisors who he or she considers qualified to conduct a medical or rehabilitation assessment, as the case may be.
- 19.3 The medical/rehabilitation advisor may,
- (a) request such further evidence as may be required in his or her opinion to answer the questions; and

- (b) examine the insured person if he or she considers an examination necessary, or if one is requested by the arbitrator through the Director.
- 19.4 (a) Where there is to be a medical or rehabilitation examination, such examination may be conducted,
- (i) in the general locale of the residence of the insured person; or
 - (ii) at a place agreed upon by the parties and the medical/rehabilitation advisor.
- (b) Where the examination cannot be conducted in the general locale of the residence of the insured person or the parties and the medical/rehabilitation advisor cannot agree, the arbitrator shall determine the location of such examination.
- (c) The costs of any medical or rehabilitation examination shall be paid by the insurer.
- 19.5 (a) The medical/rehabilitation advisor shall submit a report to the Commission promptly after the question or questions were placed before him or her.
- (b) Upon receipt of the report, the Commission shall provide a copy of the report to the arbitrator and the parties.
- 19.6 A party who wishes to cross-examine the medical/rehabilitation advisor on his or her report shall notify the Commission and the other parties within seven (7) days of receiving the report.
- 19.7 No person, under subsection 282 (9) of the *Insurance Act*, shall use or provide copies of, or release information from, any report prepared by a medical/rehabilitation advisor other than for the purpose of determining the claim in respect of which the arbitration was undertaken, except with the permission of the insured person.

20. Re-Opening of Hearing

- 20.1 The arbitrator may re-open a hearing at any time before he or she makes an arbitration order.
- 20.2 The Commission shall give the parties notice of the re-opening.
- 20.3 Section 15 shall apply with necessary modification with respect to the **Notice of Re-Opening**.

21. Arbitration Order

- 21.1 (a) The arbitrator, under subsection 279 (4) of the *Insurance Act*, shall determine issues before him or her by order and may make an order subject to such conditions as are set out in the order.

- (b) An order made by an arbitrator shall be in writing.
- 21.2 (a) An arbitration order, under subsections 282 (10) and (11) of the *Insurance Act*, may contain,
- (i) an award for benefits and interest to which the insured person is entitled under the *No-Fault Benefits Schedule* ;
 - (ii) an award of a lump sum where the arbitrator finds that an insurer has unreasonably withheld or delayed payments, of up to fifty percent (50%) of the amount to which the insured person was entitled at the time of the award under (i) together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of two percent (2%) per month, compounded monthly, from the time the benefits first became payable under the *Schedule* ; and
 - (iii) an award for expenses incurred by the insured person in respect of an arbitration proceeding as set out in Schedule 1 to this Code.
- (b) An arbitration order shall,
- (i) state the issues in dispute, the decision and the reasons for the decision; and
 - (ii) be signed by the arbitrator.
- 21.3 Upon receipt of the arbitration order, the Commission shall provide a copy of the order to the parties.

22. Settlement Order

- 22.1 If the parties settle their dispute during the arbitration process, the arbitrator, at the request of the parties, shall issue a settlement order.
- 22.2 A settlement order shall,
- (a) contain,
 - (i) the terms of the settlement agreed to by the parties, and
 - (ii) a statement that the parties agree that the settlement is final and shall not be subject to an appeal, a variation/revocation proceeding, or judicial review; and
 - (b) be signed by the parties.
- 22.3 The arbitrator shall submit the settlement order to the Commission and provide a copy of the order to the parties.

23. Enforcement

- 23.1 At the request of the insured person, the Director, under subsection 282 (14) of the *Insurance Act*, shall file a copy of the arbitration order in the Supreme Court.

24. Obligations of Insurer

- 24.1 An insurer, under section 287 of the *Insurance Act*, shall not, after an arbitration order, reduce benefits to an insured person on the basis of an alleged change of circumstances, alleged new evidence or an alleged error, unless the insured person agrees or unless the Director so orders in an appeal under section 283 or the Director or an arbitrator so orders in a variation/revocation proceeding under section 284.

PART C — APPEAL OF ARBITRATION ORDER**25. Notice of Appeal**

- 25.1 A party to an arbitration, under subsection 283 (1) of the *Insurance Act*, may appeal an arbitration order to the Director.
- 25.2 The party seeking to appeal an arbitration order shall,
- (a) file with the Commission a **Notice of Appeal** and a copy of the arbitration order being appealed, and
 - (b) pay a filing fee of one hundred dollars (\$100).
- 25.3
- (a) The **Notice of Appeal** shall be in Form 7.
 - (b) Form 7 shall include,
 - (i) a statement of the reasons for the appeal;
 - (ii) a description of the remedy sought, including the reasons for any stay of the arbitration order, if one is requested;
 - (iii) a list of the documents relied upon for the appeal; and
 - (iv) a statement whether the appellant requests an oral rehearing and, if one is requested, setting out the arguments in support of an oral rehearing.

26. Time Limits for the Filing and Service of an Appeal

- 26.1 Subject to Section 26.2, the appellant,
- (a) shall file the **Notice of Appeal** with the Commission and shall serve it on the parties to the arbitration within thirty (30) days after the date of the arbitration order, and
 - (b) shall file proof of service with the Commission.
- 26.2
- (a) The Director, under subsection 283 (3) of the *Insurance Act*, may extend the time for requesting an appeal, either before or after the thirty (30) days, if the Director is satisfied that there are,

- (i) apparent grounds for granting relief to the person, and
 - (ii) reasonable grounds for applying for the extension.
- (b) The Director may give such directions as he or she considers proper where an extension is made under (a).

26.3 The appellant shall,

- (a) serve on the parties all the materials and submissions that the appellant intends to rely upon for the appeal within fifteen (15) days of filing its **Notice of Appeal**, and
- (b) file the materials and submissions and proof of service with the Commission.

27. Response to Appeal

- 27.1 A respondent shall serve a **Response to Appeal** on the appellant and any other parties within ten (10) days of being served with a **Notice of Appeal**.
- 27.2 The **Response to Appeal** shall contain a detailed response to all matters raised in the **Notice of Appeal**.
- 27.3 The respondent shall serve on the appellant and any other parties all the materials and submissions that the respondent intends to rely upon for the appeal within fifteen (15) days of receiving the appellant's materials and submissions under Section 26.3.
- 27.4 The respondent shall file the Response, the materials and submissions, and proof of service with the Commission.

28. Reply

- 28.1 The appellant,
 - (a) may serve on the parties any reply submissions within seven (7) days of receiving the respondent's materials and submissions under Section 27.3, and
 - (b) shall file any reply submissions and proof of service with the Commission.

29. The Appeal Process

- 29.1
 - (a) The Director, under subsection 6 (4) of the *Insurance Act*, may appoint a person to hold the appeal hearing on his or her behalf and to exercise the powers and perform the duties of the Director relating to such hearings.
 - (b) An order made by a person appointed under (a) shall be an order of the Director.

- 29.2 The Director shall only consider those issues and matters that were the subject of the arbitration proceeding or that are included in the arbitration order being appealed.
- 29.3 Under subsection 283 (6) of the *Insurance Act*, an appeal does not stay the arbitration order unless the Director decides otherwise.
- 29.4 (a) The Director may determine the appeal,
- (i) on the record,
 - (ii) by way of a rehearing of all the issues before the arbitrator, or
 - (iii) partly on the record and partly by way of rehearing,
- as the Director in his or her opinion may decide.
- (b) The record includes the Notice of Appeal, the Response to Appeal, the Reply, the submitted materials and submissions, and the record of the arbitration proceeding.
- 29.5 (a) If after receipt of all materials and submissions the Director determines that a rehearing or an oral argument on specified issues is necessary in his or her opinion, the Commission shall give the parties at least ten (10) days notice of the rehearing or the oral argument.
- (b) The **Notice of Hearing** shall include,
- (i) the date, time, place and purpose of the rehearing or the oral argument;
 - (ii) the name of the hearing officer;
 - (iii) a reference to the authority under which the rehearing or the oral argument will be held; and
 - (iv) a statement that, if the party notified fails to submit materials and submissions or to attend at the rehearing or oral argument, the Director may proceed and dispose of the case in the party's absence and he or she will not be entitled to any further notice of the appeal proceedings.
- 29.6 (a) The Director may proceed with an appeal even though a party has failed to file materials or submissions if the Director is satisfied that the **Notice of Appeal** has been given to the party.
- (b) Where a **Notice of Hearing** has been given to a party, and the party does not attend at the rehearing or oral argument, the Director may proceed with the appeal in the absence of the party and he or she is not entitled to any further notice in the appeal proceedings.
- (c) An order of the Director shall not be made against a party solely on the failure of a party to submit materials or submissions or to attend at a rehearing or oral argument.

- 29.7 Each insurer that is a party to an appeal shall pay five hundred dollars (\$500) in respect of the appeal.
- 30. Questions Related to the Medical Condition or Treatment of the Insured Person or Related to Rehabilitation**
- 30.1 The Director, upon his or her own motion, may pose such questions related to the medical condition or treatment of the insured person or related to the insured person's rehabilitation.
- 30.2 Section 19 shall apply with necessary modification to any questions of the Director referred to in Section 30.1.
- 31. Interventions**
- 31.1 Subject to this Section, persons who are not parties to the appeal may make submissions on issues of law arising in an appeal.
- 31.2 The Director may request persons who are not parties to an appeal to make submissions on issues of law arising in an appeal, and such participation shall be on such terms as the Director may direct in his or her order permitting the person to participate.
- 31.3 A person who wishes to make submissions on issues of law arising in an appeal shall complete and file with the Commission an **Application of Intervention**.
- 31.4 (a) An **Application of Intervention in an Appeal** shall be in Form 8.
- (b) Form 8 shall include the applicant's reasons for wishing to participate and make submissions on the issues of law set out in the **Application**, and the applicant shall enclose such documents as he or she intends to rely upon for the application.
- 31.5 The applicant shall serve the **Application** on the parties to the appeal and shall file proof of service with the Commission.
- 31.6 (a) A party may support or object to an **Application of Intervention** by filing comments with the Commission.
- (b) The comments shall include the party's reasons why the applicant should, or should not, be permitted to participate.
- (c) The party shall serve the comments on the applicant within three (3) days of receiving the **Application** under Section 31.5.
- 31.7 The Director,
- (a) may determine the **Application** on the record,
- (b) under subsection 283 (8) of the *Insurance Act*, may permit the applicant to make submissions on issues of law arising in an appeal, and

- (c) may impose such terms on the applicant as the Director considers appropriate.

32. Order of the Director

- 32.1 (a) The Director, under subsection 279 (4) of the *Insurance Act*, shall determine issues before him or her by order and may make an order subject to such conditions as are set out in the order.
- (b) An order made by the Director shall be in writing.
- 32.2 (a) An order of the Director, under subsection 283 (7) and subsections 282 (10) and (11) of the *Insurance Act*, may contain,
 - (i) an award for benefits and interest to which the insured person is entitled under the *No-Fault Benefits Schedule* ;
 - (ii) an award of a lump sum where the Director finds that an insurer has unreasonably withheld or delayed payments, of up to fifty percent (50%) of the amount to which the insured person was entitled at the time of the award under (i), together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of two percent (2%) per month, compounded monthly, from the time the benefits first became payable under the *Schedule* ; and
 - (iii) an award for expenses incurred by the insured person in respect of an appeal proceeding as set out in Schedule 1 to this Code.
- (b) An order of the Director shall,
 - (i) state the issues in dispute, the decision and the reasons for the decision; and
 - (ii) be signed by the Director and submit to the Commission.
- 32.3 Upon receipt of the order of the Director, the Commission shall provide a copy of the order to the parties.

33. Settlement Order of the Director

- 33.1 If the parties settle their dispute during the appeal process, the Director, at the request of the parties, shall issue a settlement order.
- 33.2 Section 22 shall apply with necessary modification with respect to a settlement order made by the Director.

34. Enforcement

- 34.1 At the request of the insured person, the Director, under subsection 283 (9) of the *Insurance Act*, shall file a copy of his or her order in an appeal in the Supreme Court.

35. Obligations of Insurer

- 35.1 An insurer, under section 287 of the *Insurance Act*, shall not, after an order of the Director, reduce benefits to an insured person on the basis of an alleged change of circumstances, alleged new evidence or an alleged error, unless the insured person agrees or unless the Director or an arbitrator so orders in a variation/revocation proceeding under section 284.

PART D — VARIATION/REVOCATION**36. Application for Variation/Revocation**

- 36.1 Either the insured person or the insurer, under subsection 284 (1) of the *Insurance Act*, may apply to the Director to vary or revoke an arbitration order or an order of the Director.
- 36.2 A party seeking to have an arbitration order or an order of the Director varied or revoked shall,
- (a) file with the Commission an **Application for Variation/Revocation**, and
 - (b) pay a filing fee of one hundred dollars (\$100).
- 36.3 (a) The **Application for Variation/Revocation** shall be in Form 9.
- (b) Form 9 shall include the grounds for the variation or revocation, as the case may be, and the applicant shall enclose such documents as he or she intends to rely upon for the application.
- 36.4 The applicant shall serve the **Application** on the other parties and shall file proof of service with the Commission.

37. Response to the Application for Variation/Revocation

- 37.1 A party served with an **Application for Variation/Revocation**,
- (a) may file with the Commission a **Response to the Application for Variation/Revocation** and shall serve it on the applicant within ten (10) days of receiving the **Application** under section 36.4; and
 - (b) shall file proof of service with the Commission.

38. Reply

- 38.1 The appellant shall,
- (a) serve on the parties the reply submissions, if any, within seven (7) days of receiving the **Response** under Section 37, and

- (b) file the reply submissions with the Commission.

39. The Variation/Revocation Process

- 39.1 (a) An **Application for Variation/Revocation** may be dealt with by,
- (i) the Director,
 - (ii) the arbitrator who made the arbitration order, or
 - (iii) some other arbitrator,
- as the Director may decide.
- (b) The Director, under subsection 6 (4) of the *Insurance Act*, may appoint a person to hold the variation/revocation proceeding on his or her behalf and to exercise the powers and perform the duties of the Director relating to such hearings.
- (c) Despite (a), an arbitrator, under section 286 of the *Insurance Act*, cannot vary or revoke an arbitration order and cannot replace an arbitration order if the arbitration order is under appeal.
- 39.2 The Director or arbitrator, as the case may be, may decide the **Application** on the basis of the written submissions or, at his or her discretion, may require an oral hearing.
- 39.3 Where there is to be an oral hearing, the Commission shall give the parties at least ten (10) days notice of the hearing.
- 39.4 Each insurer that is a party to a variation/revocation proceeding shall pay five hundred dollars (\$500) in respect of the variation/revocation proceeding.

40. Order

- 40.1 Where the Director or arbitrator, as the case may be, is satisfied that,
- (a) there has been a material change in the circumstances of the insured;
 - (b) evidence not available on the arbitration or appeal has become available;
- or
- (c) there is an error in the order,
- the Director or arbitrator may,
- (d) vary the order, or
 - (e) revoke the order, and
 - (f) make a new order if he or she considers it advisable to do so.
- 40.2 An order may be prospective or retroactive.

- 40.3 The order may contain an award to the insured person for expenses incurred by the insured person in respect of the variation/revocation proceeding as set out in Schedule 1 to this Code.

PART E — STATED CASE

- 41.1 The Director, under subsection 285 (1) of the *Insurance Act*, may state a case in writing for the opinion of the Divisional Court upon any question that, in his or her opinion, is a question of law.

PART F — MISCELLANEOUS

42. General

- 42.1 Under section 279 of the *Insurance Act*:
- (a) disputes in respect of any insured person's entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which an insured person is entitled shall be resolved in accordance with sections 280, 281, 282, 283 and the *No-Fault Benefits Schedule* ;
 - (b) any restriction on a party's right to mediate, litigate, arbitrate, appeal or apply to vary/revoke an order as provided in sections 284 to 285 is void except where the restriction forms part of a settlement; and
 - (c) the mediator, arbitrator or Director, as the case may be, may adjourn the proceeding, with or without conditions, if the representative of the insurer or insured person is not authorized to bind the party he or she represents.
- 42.2 No proceeding is invalid by reason only of a defect in form or other technical irregularity.
- 42.3 The Director or arbitrator, as the case may be, may, upon such terms as he or she considers advisable, extend or abridge the time set out in this Code for doing any act, serving any notice, filing any report, document or paper or holding any proceeding.
- 42.4 Unless otherwise indicated, where time frames are set out in this Code, the reference to days is to calendar days, and holidays and weekends are to be included.
- 42.5 Where matters are not provided for in this Code, the practice shall be determined by analogy to them.

43. Service

- 43.1 Service means the effective delivery of a document to another person or the representative of the person if named.
- 43.2 A document may be served by personal delivery on the individual to be served, and service is effective on the same day as the delivery.
- 43.3 A document may be served by regular, registered or certified mail, and service is effective on the fifth (5th) day after the day on which the document is mailed.
- 43.4 A document may be served by courier service including Priority Post, and service is effective on the earlier of receipt, or on the second (2nd) day after the document is given to the courier by the party serving, whichever is sooner.
- 43.5 A document may be served on a person who participates in an exchange, and service is effective one day after the deposit if the document is date stamped in the presence of the person depositing the document.
- 43.6 (a) A document may be served by telephone transmission of a facsimile of the document, and service is effective on the day in which the document is transmitted.
- (b) A document that is served by telephone transmission shall include a cover page indicating,
- (i) the sender's name, address, and telephone number;
 - (ii) the name of the individual to be served;
 - (iii) the date and time the document is transmitted;
 - (iv) the total number of pages transmitted including the cover page;
 - (v) the telephone number from which the document is transmitted; and
 - (vi) the name and telephone number of a person to contact in the event of a transmission problem.
- 43.7 A document may be served by any other manner specified by the Director, and service is effective within the time frames specified by the Director.
- 43.8 A document that is served after 5:00 p.m. shall be deemed to have been served on the next weekday that is not a weekend or statutory holiday, in which case delivery is deemed to have been made on the next working day.
- 43.9 Where a document is deemed because of this Code to be served on a given day, the time allotted to the receiving party begins on the next working day.

44. Proof of Service

- 44.1 (a) Where proof of service is required to be filed with the Commission, the person responsible for serving the document shall make a **Statement of Service** and file it with the Commission.

(b) The **Statement of Service** shall be in Form 10.

44.2 Where proof of the service of a summons and payment or tender of fees or allowances is required to be filed with the Commission under Section 45.3, the person responsible for serving the summons shall make an **Affidavit of Service** and file it with the Commission.

45. Filing

45.1 Filing means the effective delivery of a document to the Commission.

45.2 Where this Code requires a document to be filed with the Commission, the same methods of delivery as exist for service may be used, and within the same time frames.

45.3 The Commission is not a member of a document exchange.

45.4 Where this Code requires payment of monies, a cheque or money order shall be made payable to the Treasurer of Ontario.

46. Summons

46.1 (a) The Director or arbitrator may require a person by summons,
(i) to attend at a hearing and to give evidence on oath or otherwise, and
(ii) to produce in evidence at a hearing documents, records and things specified in the summons.

(b) A **Summons** shall be in Form 11.

46.2 The party requesting the summons from the Director or arbitrator shall ensure,
(a) that it is served personally on the person summoned in accordance with the requirements of the summons; and
(b) that the person summoned is paid the same fees and allowances for attendance as are paid for the attendance of a witness summoned to attend before the Supreme Court of Ontario.

46.3 The person who served the summons must file with the Commission proof of the service of the summons and that a sufficient sum for the fees and allowances has been paid or tendered to the person summoned.

47. Transcript

47.1 Where a party wishes a transcript of the proceedings, such party shall inform the other parties of such intent, make the necessary arrangements, and pay the cost of the transcript directly to the person or agency making such record.

47.2 Where the insurer orders the transcript, it shall provide a copy of the transcript to the insured person and to the Commission without charge.

48. Language Services

- 48.1 A person, under the *French Language Services Act, 1986*, has the right to communicate in French with, and to receive available services in French from, the Commission.
- 48.2 (a) The Director or an arbitrator may provide interpretation services at an oral hearing.
- (b) Where interpretation services are being provided, a person may be summoned to attend the hearing and, before acting, shall make an oath or affirm that he or she will truly and faithfully translate the evidence.

PART G — FINANCING

- 49.1 The expenses and expenditures for the dispute resolution system shall be paid by insurers as prescribed in any regulations made under section 14 of the *Insurance Act*.

SCHEDULE 1 TO THE DISPUTE RESOLUTION PRACTICE CODE**EXPENSES**

1. The filing fees paid by the insured person when applying for arbitration, appealing an arbitration order or applying to vary or revoke an arbitration order or an order of the Director may be awarded.

2. (1) The legal fees payable by the insured person for the following matters may be awarded:

1. For all services performed before a hearing.
2. For the preparation for an arbitration, an appeal or a variation/revocation hearing.
3. For attendance at an arbitration, an appeal or a variation/revocation hearing.

(2) The maximum amount that may be awarded for legal fees is the amount calculated using the hourly rates established under the *Legal Aid Act* for professional services in civil matters before the Supreme Court of Ontario.

(3) For the purposes of subsection (2), the hourly rate may be adjusted to include, in appropriate circumstances, the experience allowance established under the *Legal Aid Act* for more experienced solicitors.

3. (1) Agent fees payable by the insured person for the following matters may be awarded:

1. For the preparation for an arbitration, an appeal or a variation/revocation hearing.

2. For attendance at an arbitration, an appeal or a variation/revocation hearing.

(2) The maximum amount that may be awarded for agent fees is the amount calculated using the hourly rates established under the *Legal Aid Act* for law clerks, articling students and investigators.

4. The amount of the following disbursements made by or on behalf of the insured person may be awarded:

1. For long distance telephone, facsimile and other telecommunication charges.

2. For typing, printing and reproducing copies of documents.

3. For the delivery, by mail or courier, of items relating to the arbitration, appeal or variation/revocation proceeding.

4. For other out-of-pocket expenses incurred in furtherance of the arbitration, appeal or variation/revocation proceeding.

5. (1) The amount of the following witness fees paid by or on behalf of the insured person may be awarded:

1. For the attendance of witnesses, in accordance with subsection (2).

2. For the attendance of an expert witness who gives opinion evidence at an arbitration, appeal or variation/revocation hearing or whose attendance is necessary, in accordance with subsection (3).

3. For a report prepared by an expert, provided to the other parties to an arbitration, appeal or variation/revocation hearing and necessary for the conduct of the hearing, in accordance with subsection (4).

(2) The maximum amount that may be awarded for the attendance of a witness is the amount of the attendance allowance for the witness that may be allowed under Rule 58.06 of the Rules of the Civil Procedure as a disbursement.

(3) The maximum amount that may be awarded for the attendance of an expert witness is \$200 per hour of attendance, up to a maximum of \$1600 per day.

(4) The maximum amount that may be awarded for a report prepared by an expert is \$800.

6. (1) The amount of the following expenses made by or on behalf of the insured person, his or her attendant, if one is required, his or her lawyer and his or her agent may be awarded:


1. For travelling expenses, in accordance with subsection (2).

2. For overnight accommodation and meals, in accordance with subsection (3).

(2) The maximum amount of travelling expenses that may be awarded for a person,

- (a) for an arbitration, appeal or variation/revocation hearing that takes place in the municipality in which the person resides, is the amount incurred by the person for each day of his or her necessary attendance at the hearing;
 - (b) for an arbitration, appeal or variation/revocation hearing that takes place outside the municipality in which the person resides and within 300 kilometres of his or her residence, is the lesser of,
 - (i) 30 cents per kilometre for one return trip between the person's residence and the place in which the hearing takes place, or
 - (ii) the amount incurred by the person;
 - (c) for an arbitration, appeal or variation/revocation hearing that takes place 300 or more kilometres from the person's residence, is the lesser of,
 - (i) the amount of the return economy airfare for the person plus 30 cents per kilometre for one return trip between his or her residence and the airport and for one return trip between the airport and the place of the hearing, or
 - (ii) the amount incurred by the person.
- (3) The maximum amount that may be awarded for overnight expenses and meals is \$150 per night for each overnight stay required for the person.

Personal information requested on this form is collected under the authority of the Insurance Act, R.S.O. 1990, c.18, as amended. This information will be used in the dispute resolution process for no-fault accident benefits. This information will be available to all parties to a proceeding. Any questions about this collection may be directed to the Office of the Director of Arbitration.

 Ontario Insurance Commission	Mailing Address/Adresse postale: Dispute Resolution Group/ Groupe de règlement des différends Station "B", Box 8500 Willowdale, Ontario M2K 2R6 Enquiries: (416) 250-7250 Toll Free: 1-800-668-0128	Ontario Automobile Insurance Application for Appointment of a Mediator (Do not write in shaded areas)
Date of Incident	Year Month Day Date Resolved by Commission	Year Month Day Commission File No.

1 Insured Person			
<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Middle Initial
Street Address P.O. Box or Rural Route No.		Apt.	
City, Town, Village		Province or State	Country Postal / Zip Code
Area Code - Home Telephone No.		Area Code - Work Telephone No.	
Language Preferred <input type="checkbox"/> English <input type="checkbox"/> French		<input type="checkbox"/> Other (specify)	
What is the best way to reach you? <input type="checkbox"/> by telephone <input type="checkbox"/> other (specify)		between the hours of: at home at work at other place (specify)	
		Days Available a.m. p.m. and p.m.	

2 Representative of Insured Person (if known)			
Representing the Insured Person as <input type="checkbox"/> Parent <input type="checkbox"/> Guardian <input type="checkbox"/> Lawyer <input type="checkbox"/> Executor, Administrator or Trustee <input type="checkbox"/> Other - specify			
<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Middle Initial
Name of Firm/Organization		Area Code - Telephone No.	
Street Address P.O. Box or Rural Route No.		Area Code - Fax No.	
		File Reference No.	
City, Town, Village		Province or State	Country Postal / Zip Code

3 Insurer			
Name of Insurer		Area Code - Telephone No.	
Street Address P.O. Box, or Rural Route No.		Area Code - Fax No.	
City, Town, Village		Province or State	Country Postal / Zip Code
Insurer No.	Claim No.	Name of Policyholder	Policy No. Claiming Under

4 Representative of Insurer (if known)			
<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Middle Initial
Name of Firm/Organization		Area Code - Telephone No.	
Position		Area Code - Fax No.	
Street Address P.O. Box or Rural Route No.		File Reference No.	
City, Town, Village		Province or State	Country Postal / Zip Code

5 Identity of Applicant and Description of Dispute

Application for Appointment of a Mediator made on behalf of

☐ **Insured Person**

I wish to dispute the insurer's assessment of my entitlement to the following no-fault benefits

or

☐ **Insurer**

The insurer wishes to dispute the insured person's entitlement to the following no-fault benefits

Please indicate the no-fault benefit you are referring to and provide reasons for the application in the space provided below

☐ **Weekly Income Benefits**☐ **Weekly Childcare Benefits**☐ **Supplementary Medical and Rehabilitation Benefits**☐ **Care Benefits**☐ **Funeral Expenses**☐ **Death Benefits**☐ **Interest on Overdue Payments**

By signing this application for Appointment of a Mediator, the Applicant consents to the release by the Insurer to the Mediation Group of the Ontario Insurance Commission of all medical reports and information in the possession of the Insurer.

Signature of Applicant or Representative

Name of Person Signing (Please Print)

Date


Year

Month

Day

Form 4 Dispute Resolution Practice Code

Personal information requested on this form is collected under the authority of the Insurance Act, R.S.O. 1990, c.18, as amended. This information will be used in the dispute resolution process for no-fault accident benefits. This information will be available to all parties to a proceeding. Any questions about this collection may be directed to the Office of the Director of Arbitrations.

	Ontario Insurance Commission	5160 Yonge Street 14th Floor North York, Ontario M2N 6L9 Tel: (416) 590-7019	Mailing Address Dispute Resolution Group Station "B", Box 8500 Willowdale, Ontario M2K 2R6	Ontario Automobile Insurance Application for Appointment of an Arbitrator (Do not write in shaded areas)				
Date of Incident	Year	Month	Day	Date Received by Commission	Year	Month	Day	Commission File No

1 Insured Person				
<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms	Last Name		First Name	Middle Initial
Street Address P.O. Box or Rural Route No.				Appt
City, Town, Village		Province or State	Country	Postal / Zip Code
Area Code - Home Telephone No		Area Code - Work Telephone No		Language <input type="checkbox"/> English Preferred <input type="checkbox"/> French <input type="checkbox"/> Other (specify)

2 Representative of Insured Person (if any)					
Representing the Insured Person as <input type="checkbox"/> Parent <input type="checkbox"/> Guardian <input type="checkbox"/> Lawyer <input type="checkbox"/> Executor, Administrator or Trustee <input type="checkbox"/> Other - specify					
<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms	Last Name		First Name	Middle Initial	Area Code - Telephone No
Name of Firm/Organization				Area Code - Fax No	
Street Address P.O. Box or Rural Route No.				Fax Reference No	
City, Town, Village		Province or State	Country	Postal / Zip Code	

3 Insurer				
Name of Insurer				
Street Address No P.O. Box or Rural Route No.				
City, Town, Village		Province or State	Country	Postal / Zip Code
Insurer No	Claim No.	Name of Policyholder	Policy No. Claiming Under	

4 Representative of Insurer (if known)					
<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms	Last Name		First Name	Middle Initial	Area Code - Telephone No
Name of Firm/Organization			Position	Area Code - Fax No	
Street Address P.O. Box or Rural Route No.			Fax Reference No		
City, Town, Village		Province or State	Country	Postal / Zip Code	

CT 75041 (06/92)

5 Description of Dispute

I wish to dispute the insurer's position respecting the following no-fault benefits
 (Please indicate the benefit you believe you are entitled to, your reasons for contesting the insurer's position and the remedy you are seeking
 You may respond to issues set out in the Report of Mediator.)

☐ **Weekly Income Benefits**☐ **Weekly Childcare Benefits**☐ **Supplementary Medical and Rehabilitation Benefits**☐ **Care Benefits**☐ **Funeral Expenses**☐ **Death Benefits**☐ **Interest on Overdue Payments**

Do you wish the hearing
 to be conducted in
 French?

☐ Yes ☐ No

Do you require an interpreter to be
 present at the hearing, if one is held?
 If yes, indicate language below

☐ Yes ☐ No

Do you require services for
 the visually or hearing impaired
 or for other disabilities?

☐ Yes ☐ No

If Yes to above, briefly describe your requirements


Signature of Applicant or Representative

Name of Person Signing (Please Print)

Date

Form 5 Dispute Resolution Practice Code

Personal information requested on this form is collected under the authority of the Insurance Act, R.S.O. 1990, c.18, as amended. This information will be used in the dispute resolution process for no-fault accident benefits. This information will be available to all parties to a proceeding. Any questions about this collection may be directed to the Office of the Director of Arbitrations.

	Ontario Insurance Commission	5160 Yonge Street 14th Floor North York, Ontario M2N 6L9 Tel: (416) 590-7019	Mailing Address Dispute Resolution Group Station "B", Box 8500 Willowdale, Ontario M2K 2R5	<h2 style="margin: 0;">Ontario Automobile Insurance Response by Insurer</h2>
	(Do not write in shaded areas)			
Date of Incident _____	Year _____ Month _____ Day _____	Date Received by Commission _____	Year _____ Month _____ Day _____	Commission File No. _____

1 Insured Person

<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name _____	First Name _____	Middle Initial _____
Street Address _____ P.O. Box or Rural Route No. _____ Apt. _____			

City, Town, Village _____	Province or State _____	Country _____	Postal / Zip Code _____
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2 Insurer

Name of Insurer _____			
Insurer No. _____	Claim No. _____	Name of Policyholder _____	Policy No. Claiming Under _____

3 Representative of Insurer

<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name _____	First Name _____	Middle Initial _____	Area Code - Telephone No. _____
Name of Firm/Organization _____			Position _____	Area Code - Fax No. _____
Street Address _____ P.O. Box or Rural Route No. _____				File Reference No. _____
City, Town, Village _____	Province or State _____	Country _____	Postal / Zip Code _____	

4 Response by Insurer

(Please respond briefly to each issue raised in the Application for Appointment of an Arbitrator, give reasons for your continuing denial of no-fault benefits and describe the remedy you are seeking; also respond to issues set out in the Report of Mediator.)

☐ **Weekly Income Benefits**

☐ **Weekly Childcare Benefits**

4 Response by Insurer (continued)

☐ Supplementary Medical and Rehabilitation Benefits

☐ Care Benefits

☐ Funeral Expenses

☐ Death Benefits

☐ Interest on Overdue Payments

Do you wish to waive an oral hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	Do you wish the hearing to be conducted in French? <input type="checkbox"/> Yes <input type="checkbox"/> No	Do you require an interpreter to be present at the hearing, if one is held? (If yes, indicate language below) <input type="checkbox"/> Yes <input type="checkbox"/> No	Do you require services for the visually or hearing impaired or for other disabilities? <input type="checkbox"/> Yes <input type="checkbox"/> No
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If Yes to above, briefly describe your requirements

Signature of Insurer Representative

Name of Person Signing (Please Print)

Date

Year

Month

Day

4 Reply to Issues Responded to by Insurer (continued)

☐ Supplementary Medical and Rehabilitation Benefits

☐ Care Benefits

☐ Funeral Expenses

☐ Death Benefits

☐ Interest on Overdue Payments

Do you wish to waive an oral hearing? ☐ Yes ☐ No


Signature of Insured Person or Representative

Name of Person Signing (Please Print)

Date Year Month Day

Form 7 Dispute Resolution Practice Code

Personal information requested on this form is collected under the authority of the Insurance Act, R.S.O. 1990, c.i.8, as amended. This information will be used in the dispute resolution process for no-fault accident benefits. This information will be available to all parties to a proceeding. Any questions about this collection may be directed to the Office of the Director of Arbitrations.

	Ontario Insurance Commission 5160 Yonge Street 14th Floor North York, Ontario M2N 6L9 Tel: (416) 590-7019	Mailing Address Dispute Resolution Group Station "B", Box 8500 Willowdale, Ontario M2K 2R6	Ontario Automobile Insurance Notice of Appeal to Director of Arbitrations (Do not write in shaded areas)
Date of Incident	Year Month Day	Date Received by Commission	Year Month Day Commission File No.

Appellant _____ **and Respondent(s)** _____

1 Appellant				
Name _____				Area Code - Home Telephone No. _____
Street Address P.O. Box or Rural Route No. _____				Area Code - Work Telephone No. _____
City, Town, Village	Province or State	Country	Postal / Zip Code	Area Code - Fax No. _____
2 Appellant's Representative (if any)				
Name _____				Area Code - Home Telephone No. _____
Street Address P.O. Box or Rural Route No. _____				Area Code - Work Telephone No. _____
City, Town, Village	Province or State	Country	Postal / Zip Code	Area Code - Fax No. _____
3 The Appeal				

The Appellant Appeals to the Director of Arbitrations the Arbitration Order of _____ **Arbitrator**

dated _____ **under Commission File No.** _____

A copy of the Arbitration Order is attached.

4	Particulars
The Appellant appeals the decision(s) on the following no-fault benefits: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> Weekly Income Benefits</div> <div style="width: 50%;"><input type="checkbox"/> Weekly Childcare Benefits</div> <div style="width: 50%;"><input type="checkbox"/> Supplementary Medical and Rehabilitation Benefits</div> <div style="width: 50%;"><input type="checkbox"/> Care Benefits</div> <div style="width: 50%;"><input type="checkbox"/> Funeral Expenses</div> <div style="width: 50%;"><input type="checkbox"/> Death Benefits</div> <div style="width: 50%;"><input type="checkbox"/> Interest on Overdue Payments</div> <div style="width: 50%;"><input type="checkbox"/> Lump Sum Award</div> <div style="width: 50%;"><input type="checkbox"/> Award for Expenses</div> </div>	
5 Reasons for Appeal	

The reasons for the appeal are as follows:

6 Remedy Sought

The remedy sought is as follows:

7 Documents

The Appellant relies on the following documents for the appeal (list the documents):

The Appellant is required to file with the Commission and serve on the parties all the materials and submissions that the Appellant intends to rely upon for the appeal *within 15 days* of filing this Notice

8 Stay of Arbitration Order☐ **The Appellant Asks for a stay of the Arbitration Order.**

The reasons supporting the request for a stay are as follows:

9 Oral Rehearing☐ **The Appellant Asks for an oral rehearing of the appeal.**

The reasons supporting the request for an oral rehearing are as follows:

Signature of Appellant or Representative

Please Print Name of Person Signing

Date

Year

Month

Day


To Respondent(s):

10 Notes

1. If you wish to oppose this Appeal, you must file with the Commission and serve on the Appellant and any other parties a Response to Appeal *within 10 days* of being served with this Notice. You must also file and serve all the materials and submissions that you intend to rely upon for the appeal *within 15 days* of receiving the Appellant's materials and submissions.
2. If you fail to file your Response or your materials and submissions, the Director may proceed with the appeal without further notice to you.

Form 8 Dispute Resolution Practice Code

Personal information requested on this form is collected under the authority of the Insurance Act, R.S.O. 1990, c.18, as amended. This information will be used in the dispute resolution process for no-fault accident benefits. This information will be available to all parties to a proceeding. Any questions about this collection may be directed to the Office of the Director of Arbitrations

	Ontario Insurance Commission	5160 Yonge Street 14th Floor North York, Ontario M2N 6L9 Tel: (416) 590-7019	Mailing Address Dispute Resolution Group Station "B", Box #500 Wilfordale, Ontario M2K 2R6	Ontario Automobile Insurance Application for Intervention in an Appeal to Director of Arbitrations <small>(Do not write in shaded areas)</small>
	Date of Incident	Year Month Day	Date Received by Commission	

1 Applicant				
Name			Area Code - Home Telephone No.	
Street Address P.O. Box or Rural Route No.			Area Code - Work Telephone No.	
City, Town, Village	Province or State	Country	Postal / Zip Code	Area Code - Fax No.
2 Applicant's Representative (if any)				
Name			Area Code - Home Telephone No.	
Street Address P.O. Box or Rural Route No.			Area Code - Fax No.	
City, Town, Village	Province or State	Country	Postal / Zip Code	
3 The Application				

In the Appeal Between:

Appellant _____ and Respondent(s) _____

The Applicant Seeks to participate and make submissions of law in the appeal of the Arbitration Order of _____ dated _____ under Commission File No. _____

Arbitrator

4 Particulars
The Applicant seeks to make submissions on the following issues of law (include a reference to any statutory provision to be relied on):

The reasons the Applicant seeks to participate to make submissions on the issues of law (set out above) are as follows:

The Applicant relies on the following documents for the application (list the documents):

Copies of the documents are attached to this Application.

Signature of Applicant or Representative

Please Print Name of Person Signing

Date	Year	Month	Day
------	------	-------	-----


To: Appellant _____ and Respondent(s): _____

7 Note

If you wish to support or object to this Application for Intervention, you must file with the Commission and serve on the Applicant and any other parties your **Comments to the Application** within 3 days of being served with this Application.

Form 9 Dispute Resolution Practice Code

Personal information requested on this form is collected under the authority of the Insurance Act, R.S.O. 1990, c.18, as amended. This information will be used in the dispute resolution process for no-fault accident benefits. This information will be available to all parties to a proceeding. Any questions about this collection may be directed to the Office of the Director of Arbitrations.

	Ontario Insurance Commission 5180 Yonge Street 14th Floor North York, Ontario M2N 6L9 Tel: (416) 590-7019	Mailing Address Dispute Resolution Group Station "B", Box #500 Willowdale, Ontario M2K 2R6	<h3>Ontario Automobile Insurance Application for Variation/Revocation to Director of Arbitrations</h3> <p>(Do not write in shaded areas)</p>
Date of Incident Year Month Day _____	Date Received by Commission Year Month Day _____	Commission File No. _____	

Applicant _____ **and Respondent(s)** _____

1 Applicant				
Name				Area Code - Telephone No.
Street Address P.O. Box or Rural Route No.				Area Code - Work Telephone No.
City, Town, Village	Province or State	Country	Postal / Zip Code	Area Code - Fax No.
2 Applicant's Representative (if any)				
Mr	Last Name	First Name	Mtd. Init.	Area Code - Telephone No.
Ms				Area Code - Fax No.
Street Address P.O. Box or Rural Route No.				Area Code - Fax No.
City, Town, Village	Province or State	Country	Postal / Zip Code	
3 The Application				

The Applicant Seeks from the Director of Arbitrations a Variation/Revocation of the Arbitration Order of

_____ dated _____ under Commission File Number _____

Arbitrator

A copy of the Arbitration Order is attached.

4 Particulars	
The Applicant seeks a variation/revocation of the decision(s) on the following no-fault benefits:	
<input type="checkbox"/> Weekly Income Benefits	<input type="checkbox"/> Weekly Childcare Benefits
<input type="checkbox"/> Funeral Expenses	<input type="checkbox"/> Death Benefits
<input type="checkbox"/> Award for Expenses	<input type="checkbox"/> Interest on Overdue Payments
<input type="checkbox"/> Supplementary Medical and Rehabilitation Benefits	
<input type="checkbox"/> Care Benefits	
<input type="checkbox"/> Lump Sum Award	

CP 75045 (06/92)

5	Grounds for Variation/Revocation
----------	---

The grounds for the variation/revocation are as follows:

6	Remedy Sought
----------	----------------------

The remedy sought is as follows:

7	Documents
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The Applicant relies on the following documents for the variation/revocation (list the documents):


Copies of the documents are attached to this Application

Signature of Applicant or Representative	Please Print Name of Person Signing	Date <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center;">Year</td> <td style="width: 20%; text-align: center;">Month</td> <td style="width: 20%; text-align: center;">Day</td> </tr> <tr> <td style="text-align: center;"> </td> <td style="text-align: center;"> </td> <td style="text-align: center;"> </td> </tr> </table>	Year	Month	Day			
Year	Month	Day						

To Respondent(s):

8	Notes
<p>1. If you wish to oppose this Application, you must file with the Commission and serve the Applicant and any other parties a Response to the Application for Variation/Revocation within 10 days of being served with this Application.</p> <p>2. If you fail to file your Response, the Director may proceed with the application without further notice to you.</p>	

Form 10 Dispute Resolution Practice Code

	Ontario Insurance Commission 5160 Yonge Street 14th Floor North York, Ontario M2N 6L9 Tel (416) 590-7019	Mailing Address Dispute Resolution Group Station "B" Box 8500 Willowdale, Ontario M2K 2R6	<h2 style="margin: 0;">Ontario Automobile Insurance Statement of Service</h2>
(Do not write in shaded areas)			
Date of Incident Year Month Day _____	Date Received by Commission Year Month Day _____	Commission File No _____	

1 Note

The purpose of this statement is to verify that a copy of a document was delivered to a party. A Statement of Service must be completed for every document served, for each party. Where proof of service of a Summons and payment or tender of fees or allowances is required to be filed with the Commission, the person responsible for serving shall file an Affidavit of Service. A copy of the facsimile cover transmission record, or the courier or postal receipt may be required as evidence to support this Statement.

2 Parties

Applicant _____ and Respondent(s) _____

3 Statement of Service

Acting on behalf of: ☐ Applicant ☐ Respondent _____ Name of Respondent _____

I, _____ Name of Person Who Served _____ Position _____, state that I served
 _____ Name of Person Served _____, who represents _____ Name of Party Served _____

4 Method of Service

What was served: ☐ Application ☐ Response ☐ Reply

☐ Report of an Expert Witness

☐ Other (specify) _____

Method of Service:

☐ Personal Delivery ☐ Courier (including Priority Post) ☐ Facsimile copier (FAX) ☐ Regular Mail

☐ Certified Mail ☐ Registered Mail ☐ Document Exchange

☐ Other (state method and time frame specified by the Director) _____


Name of Courier, Agent or Service Used	Time Document(s) Delivered / Sent <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Date Document(s) Delivered / Sent Year Month Day _____
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If personal delivery, address where you served document(s)

Signature of Person Who Served	Date Year Month Day _____
--------------------------------	---------------------------------------

75046 (07/91)

Form 11 Dispute Resolution Practice Code

	Ontario Insurance Commission 5150 Yonge Street 14th Floor North York, Ontario M2N 6L9 Tel: (416) 590-7019	Mailing Address Dispute Resolution Group Station "B", Box 8500 Willowdale, Ontario M2K 2R6	<h2 style="margin: 0;">Ontario Automobile Insurance Summons to a Witness before _____</h2> <p style="text-align: right; margin: 0;">Insurance Act, R.S.O. 1990, c.I.8</p>
Date of Incident	Year Month Day	Date Issued	Year Month Day Commission File No.

1 Parties

Applicant _____ and Respondent(s) _____

2 Summons to Witness

To:			
<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name of Witness	First Name	Middle Initial
Street Address		P.O. Box or Rural Route No.	
City, Town, Village		Province or State	Country
		Postal / Zip Code	
<p>You are hereby summoned and required to attend before _____</p> <p>at a proceeding to be held at _____</p> <p>in the _____ of _____ on _____ day, the _____ day of _____ 19 _____ at the hour of _____ o'clock in the _____ noon (local time).</p> <p>and so from day to day until the hearing is concluded or the _____ otherwise orders.</p> <p>to give evidence on oath touching the matters in question in the proceedings and to bring with you and produce at such time and place.</p> <p>_____</p> <p>_____</p>			

Ontario Insurance Commission
Office of the Director of Arbitrations

3 Notes

- 1 You are entitled to be paid the same personal allowances for your attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Supreme Court of Ontario.
- 2 If you fail to attend and give evidence at the hearing, or to produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to punishment by the Supreme Court in the same manner as if for contempt of that court for disobedience to a subpoena.

REGULATION 663

AGENTS' LICENCES

R.R.O. 1990, Reg. 663

1. This Regulation applies to all classes of licences that authorize the carry on of business as an insurance agent.

2. (1) Where an application for a licence is made in respect of a partnership, a separate application shall be made in the partnership or trade name by each partner thereof and, where the application is for an agent's licence for life insurance, each partner shall be appointed by the same insurer.

(2) Where an application for a licence is made by a corporation, a separate application shall be made in the corporate name by each director, officer or other person authorized to act in the name of and on behalf of the corporation and by any shareholder to whom has been issued or who is entitled to more than one-half of the issued shares of the corporation and, where the application is for an agent's licence for life insurance, each director, officer or other person authorized to act in the name of or on behalf of the corporation and any shareholder to whom has been issued or who is entitled to more than one-half of the issued shares of the corporation shall be appointed by the same insurer.

3. (1) An application for a licence shall be accompanied by the certificate of an insurer certifying that the applicant is appointed to act as its agent.

(2) Where an application for a licence is made by a corporation, the application shall be accompanied by,

- (a) a copy of the Act or instrument of incorporation and of the by-laws; and
- (b) the names of the directors, officers and shareholders of the corporation, the addresses of their places of residence, their occupations and the number of shares in the corporation held by each.

(3) No licence shall be issued to a corporation unless the objects of the corporation as stated in its act of incorporation, or instrument of incorporation, are expressly stated to be for the purpose of acting as an insurance agent for the class or classes of insurance agency specified in the *Insurance Act* and for which the licence is applied for or for such other purposes as are approved by the Superintendent as being consistent with the provisions of the *Insurance Act* and the business of an insurance agency.

4. (1) An applicant for licence shall be granted a licence where the Superintendent is satisfied that the applicant,

- (a) is of good character and reputation;
- (b) is possessed of a reasonable educational background;
- (c) if previously employed or engaged in business, has a satisfactory record in such employment or business;

- (d) has passed a qualification examination as set by the Superintendent for the purpose;
- (e) is otherwise a suitable person to receive a licence;
- (f) intends to hold himself, herself or itself out publicly and carry on business in good faith as an insurance agent;
- (g) has not made the application for the purpose of obtaining a licence to act as an insurance agent in respect of any particular risk or risks or directly or indirectly to obtain an agent's commission for insurance on the applicant's own life or property or on the lives or property of the applicant's family, employer or fellow employees;
- (h) or the applicant's spouse or, in the case of a corporation, any director, officer, shareholder or employee of the corporation, is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business.

(2) Without limiting the generality of clause (1)(h), an applicant shall be deemed to be in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business if the applicant is,

- (a) an officer or employee of a bank, trust company, loan company or finance company;
- (b) an assessor, tax collector or issuer of building permits;
- (c) a doctor or a dentist;
- (d) a person engaged directly or indirectly in the manufacturing, repairing, servicing or selling of automobiles or in supplying parts or accessories therefor, or an employee of such person;
- (e) a lawyer or an employee thereof;
- (f) an employer of employees other than those employed solely for the business of the insurance agency or for the business referred to in clauses 5(3)(b)(i) and (ii);
- (g) a foreman or payroll agent;
- (h) an accountant, auditor or trustee in bankruptcy;
- (i) a magistrate or police officer;
- (j) a member of the clergy or a minister;
- (k) an officer or employee of an automobile association or club or an agent thereof;
- (l) a mortgage broker who is not also registered as a real estate broker under the *Real Estate and Business Brokers Act*;
- (m) a full-time employee of the Government of Canada or any branch thereof, of

any municipal or provincial government in Canada or any branch thereof or of a Crown corporation;

- (n) an employee of a brewery, brewery warehousing company or a person engaged in handling or dispensing beer or spirituous liquors;
- (o) an officer or employee of a trade union or trade association;
- (p) an officer or employee of a credit union or caisse populaire; or
- (q) a person occupying office space in the office of any person referred to in clauses (a) to (p).

(3) Subject to section 6, a licence may be granted to an applicant who is a non-resident of Ontario and who produces a certificate from the Department of Insurance of the province or state in which the applicant is resident that certifies that the applicant is licensed for the class of insurance for which the application is made.

(4) A life insurance agent may be licensed to act as agent for two insurers transacting life insurance where,

- (a) one of the insurers is a wholly owned subsidiary of the other insurer;
- (b) both of the insurers are licensed for the transaction of life insurance in Ontario; and
- (c) the insurers have filed with the Superintendent an agreement in writing, acceptable to the Superintendent, setting forth the terms and conditions of the appointment of agents to represent them in the solicitation of, or negotiation for, life insurance.

5. (1) In this section, "full time" means thirty hours or more per week as averaged over the most recent three-month period.

(2) A licence or renewal of a licence shall not be granted unless,

- (a) the applicant is working or intends to work full time as an insurance agent; and
- (b) the sole business, occupation or employment of the applicant is that of an insurance agent.

(3) Subsection (2) does not apply to an applicant who,

- (a) carries on the main portion of his, her or its business as an insurance agent in a township having a population of less than 10,000 or in any other municipality having a population of less than 5,000; or
- (b) carries on business as,
 - (i) a transportation company or ticket agency for the business of travel, accident and baggage insurance, or
 - (ii) a real estate broker or real estate salesperson.

(4) The Superintendent may require an applicant for a licence or renewal of a licence to verify by statutory declaration that the applicant complies with clauses (2)(a) and (b).

6. No licence shall be issued to a corporation incorporated or with its head office outside Canada or to a corporation the majority of whose issued shares are owned beneficially or otherwise by a shareholder resident outside Canada, or to a partnership in which any partner is resident outside Canada, unless the corporation or partnership held a licence on the 6th day of July, 1961 and was one to which a predecessor of this section applied on that date.

7. A licence shall not be issued to an applicant who is not a corporation and who carries on business alone in a name other than the applicant's own, except that a licence may be issued where the applicant has purchased the business and uses the name of the seller together with the applicant's own for a period not exceeding three years.

8. (1) A licensee shall not act as a real estate salesperson for a real estate broker who is not licensed under this Regulation.

(2) A licensee who also holds a licence as a real estate broker shall not pay commission on insurance to any salesperson or other person, whether employed by the licensee or not, who is not licensed under this Regulation.

9. (1) An agent's licence for a class of insurance other than life insurance expires with the 30th day of September next following its date of issue or renewal, unless otherwise specified in the licence.

(2) An agent's licence for life insurance expires with the 31st day of March next following its date of issue or renewal, unless otherwise specified in the licence.

10. (1) An application for renewal of a licence shall be made in the same manner as for a licence in the first instance.

(2) The Superintendent may require an applicant for renewal of licence to file,

(a) a return, verified by a statutory declaration, showing the applicant's accounts payable and accounts receivable, together with the time when each account receivable first became due; and

(b) a financial statement of the applicant's insurance agency operations, verified by a chartered accountant, certified public accountant or similarly qualified person.

(3) An application for renewal of a licence may be refused on any grounds upon which an original application for a licence may be refused.

11. (1) Any insurer that appoints an agent, either by written contract or otherwise, shall forthwith notify the Superintendent in writing of such appointment, giving the full name, address and licence number of the agent.

(2) Where an insurer terminates its appointment of an agent, it shall forthwith notify the Superintendent in writing of the termination together with the reasons therefor.

12. Where an insurer that has certified its appointment of an agent to the Superintendent terminates the appointment, the agent shall forthwith notify the Superintendent in writing of the fact and shall return the agent's licence to the Superintendent who shall suspend the licence until the agent submits a new certificate of an insurer certifying that

the applicant is appointed to act as its agent, or until the licence expires or is revoked, whichever occurs first.

13. The Superintendent may suspend or revoke a licence on any grounds upon which an application for a licence may be refused or if, after due investigation and hearing, it appears to the Superintendent that the licensee,

- (a) has violated any provision of the Act or of the regulations in the licensee's operations as an insurance agent;
- (b) has made a material misstatement or omission in the application for the licence;
- (c) has been guilty of a fraudulent practice;
- (d) has demonstrated incompetency or untrustworthiness to transact the insurance agency business for which the licence has been granted, by reason of anything done or omitted in or about such business under the authority of the licence; or
- (e) has employed an unlicensed person as an agent, whether upon salary or otherwise without having first obtained the written approval of the Superintendent.

14. The Superintendent may suspend, revoke or refuse to renew the licence of any person who has,

- (a) carried on any business or occupation during the term of such licence other than as permitted by subsection 5(3); or
- (b) carried on the business of an insurance agent during the term of such licence other than on a full-time basis.

15. Clauses 5(2)(a) and 14(b) do not apply to an applicant who was licensed as an insurance agent on the 15th day of August, 1986.

16. Any insurer that appoints an agent who was not licensed on the 15th day of August, 1986, either by written contract or otherwise, shall maintain records of the time worked by such agent and provide such records to the Superintendent if requested.

REGULATION 664

AUTOMOBILE INSURANCE

R.R.O. 1990, Reg. 664; am. O. Reg.
780/93, ss. 1-8(5); O. Reg. 823/93, s. 1;
O. Reg. 850/93, ss. 1, 2; O. Reg. 553/94

APPLICATION FOR AUTOMOBILE INSURANCE

(Section 228 of the Act)

1. In this Regulation,

“commercial vehicle”.—“commercial vehicle” means an automobile used primarily to transport materials, goods, tools or equipment in connection with the insured’s occupation, and includes a police department vehicle, a fire department vehicle, a driver training vehicle, a vehicle designed specifically for construction or maintenance purposes, a vehicle rented for thirty days or less, or a trailer intended for use with a commercial vehicle;

“public vehicle”.—“public vehicle” means an automobile used primarily to provide transportation services to the public, and includes an ambulance, bus, funeral vehicle, limousine or taxi.

2. [Repealed. O. Reg. 780/93, s. 2.]

MONTHLY PREMIUM PAYMENTS

(Section 234 of the Act)

3. (1) This section applies with respect to statutory condition 3 as set out in the Schedule to Ontario Regulation 777/93.

(2) An insurer is not required to permit an insured to pay the premium in instalments unless all of the following conditions are met:

1. The insurer, together with its affiliates, insured at least 10,000 private passenger automobiles in Ontario during the previous year.
2. The contract is written on Ontario Policy Form 1 or 2.
3. The contract does not insure a commercial vehicle or public vehicle.
4. The contract does not insure five or more vehicles that are under common ownership or management.
5. The total annual premium payable under the contract exceeds \$300.
6. The insured has not had more than one automobile insurance policy terminated

by an insurer for non-payment of the premium during the thirty-six months before the contract takes effect.

(3) [Repealed. O. Reg. 780/93, s. 3(1).]

(4) As a precondition for permitting an insured to pay the premium in instalments, an insurer may require that the insured,

- (a) make an initial payment equal to two monthly instalments of the premium; and
- (b) agree to make all payments under the contract by pre-authorized payment from the insured's account at a financial institution.

(5) The maximum interest rate that an insurer may charge for instalment payments in respect of a contract entered into or renewed before July 1, 1994 is 3 per cent of the total premium payable under a contract.

(5.1) The maximum interest rate that an insurer may charge for instalment payments in respect of a contract entered into on or after July 1, 1994 is,

- (a) 3 per cent of the total premium payable under the contract, if the term of the contract is twelve months or more;
- (b) 1.5 per cent of the total premium payable under the contract, if the term of the contract is six months or more but less than twelve months; and
- (c) 0.5 per cent of the total premium payable under the contract, if the term of the contract is less than six months.

(6) The amount of each instalment payment shall be calculated as blended principal and interest.

(7) An insurer who is not required to permit its insureds to pay their premiums in instalments but who chooses to do so is subject to the same requirements as those insurers who are required to permit their insureds to pay their premiums in instalments. O. Reg. 780/93, s. 3(1)-(3)

EXEMPTION FROM NOTICE

(Section 236 of the Act)

4. Insurers are exempted from section 236 of the Act with respect to contracts of automobile insurance that insure groups of at least five vehicles that are under common ownership or management and that are used for business, commercial or public purposes.

REFUSAL TO ISSUE CONTRACTS

(Section 237 of the Act)

5. (1) No insurer shall decline to issue, refuse to renew or terminate any contract of automobile insurance or refuse to provide or continue any coverage or endorsement solely because,

- (a) the applicant or another person who would be an insured person under the contract is or was insured by the Facility Association; or
- (b) another insurer declined to issue or renew another contract of automobile insurance for the applicant or another person who would be an insured person under the contract.

(2) In deciding whether to issue, renew or terminate any contract of automobile insurance or to provide or continue any coverage or endorsement, the insurer shall not consider,

- (a) the existence of a physical or mental disability affecting a person who would be an insured person under the contract;
- (b) the number of persons who would become insured persons under the contract or their state of health or life expectancy;
- (c) the occupation, profession or employment circumstances of any person who would be an insured person under the contract;
- (d) the level of income of any person who would be an insured person under the contract;
- (e) the existence or non-existence of a medical, surgical, dental or hospitalization plan or any other arrangement or plan providing coverage to a person who would be an insured person under the contract for services and treatment that the insurer would otherwise be required to pay for under the *Statutory Accident Benefits Schedule*;
- (f) the existence or non-existence of an income continuation benefit plan, a sick leave plan or any other arrangement or plan providing coverage to a person who would be an insured person under the contract for benefits that the insurer would otherwise be required to pay for under the *Statutory Accident Benefits Schedule* ;
- (g) a request by the applicant to purchase any optional benefit established under paragraph 10 of subsection 121(1) of the Act;
- (h) any past claim under Schedule C of the Act or under the *Statutory Accident Benefits Schedule* arising out of an incident for which a person who would be an insured person under the contract was not at fault; or
- (i) any past claim under section 263 of the Act for loss or damage, arising directly or indirectly from the use or operation of an automobile, for which a person who would be an insured person under the contract was not at fault.

(3) In deciding whether to issue, renew or terminate a contract providing only third party liability coverage in any amount and the benefits and coverages described in subsection 265(1) (uninsured automobile coverage) and section 268 (statutory accident benefits) of the Act, the insurer shall not consider whether a person who would be an insured person under the contract has made any past claim for loss or damage to an automobile, including its equipment, caused by any peril other than collision or upset.

O. Reg. 780/93, ss. 1, 4.

- (4) An insurer shall not terminate a contract of automobile insurance because,
- (a) a group marketing plan within the meaning of section 17 terminates; or
 - (b) the insured ceases to be a member of a group referred to in clause 16(5)(a) or (b). O. Reg. 780/93, ss. 1-4; O. Reg. 553/94, s. 1.

EXCESS ECONOMIC LOSS ENDORSEMENT

5.1 (1) If requested by an insured in respect of a contract of automobile insurance, the insurer shall offer the endorsement set out in Ontario Endorsement Form 45 (OEF 45), as approved by the Commissioner on November 29, 1993 under section 227 of the Act.

(2) Benefits provided by the endorsement referred to in subsection (1) shall be deemed not to be statutory accident benefits for the purpose of Part VI of the Act. O. Reg. 823/93, s. 1.

DIRECT COMPENSATION – PROPERTY DAMAGE

(Clause 263(5)(b) of the Act)

6. (1) For the purpose of clause 263(5)(b) of the Act, the insurer of an automobile that is in the care, custody or control of a person who is engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles is entitled to indemnification from the person.

(2) The amount of the indemnity is limited to that proportion of the loss that is attributable to the fault, as determined under the fault determination rules, of the person or of an employee or agent of the person.

7. (1) For the purpose of clause 263(5)(b) of the Act, the insurer of an automobile that is being towed by another automobile is entitled to indemnification from the lessee or, if there is no lessee, from the owner of the automobile towing it,

- (a) if the lessee or owner, as the case may be, is engaged in the business of towing automobiles; or
- (b) if the automobile towing the insured automobile has a gross vehicle weight greater than 4,500 kilograms.

(2) The amount of the indemnity is limited to that proportion of the loss that is attributable to the fault, as determined under the fault determination rules, of the driver of the automobile that is towing the insured automobile.

8. (1) For the purpose of clause 263(5)(b) of the Act, the insurer of an automobile the contents of which suffer damage in an amount greater than \$20,000 is entitled to indemnification from the insurer of the other automobile involved in the incident.

(2) The amount of the indemnity is limited to that proportion of the loss over \$20,000 that is attributable to the fault, as determined under the fault determination rules, of the driver of the other automobile.

8.1 The following classes of contracts are prescribed for the purpose of subsection 263(5.1) of the Act:

1. Contracts that insure commercial vehicles.
2. Contracts that insure public vehicles.
3. Contracts written on Ontario Policy Form 4. O. Reg. 780/93, s. 5.

INDEMNIFICATION FOR STATUTORY ACCIDENT BENEFITS

(Section 275 of the Act)

9. (1) In this section,

“first party insurer”.—“first party insurer” means the insurer responsible under subsection 268(2) of the Act for the payment of statutory accident benefits;

“heavy commercial vehicle”.—“heavy commercial vehicle” means a commercial vehicle with a gross vehicle weight greater than 4,500 kilograms;

“motorcycle”.—“motorcycle” means a self-propelled vehicle with a seat or saddle for the use of the driver, steered by handlebars and designed to travel on not more than three wheels in contact with the ground, and includes a motor scooter and a motor assisted bicycle as defined in the *Highway Traffic Act*;

“motorized snow vehicle”.—“motorized snow vehicle” means a motorized snow vehicle as defined in the *Motorized Snow Vehicles Act*;

“off-road vehicle”.—“off-road vehicle” means an off-road vehicle as defined in the *Off-Road Vehicles Act*;

“second party insurer”.—“second party insurer” means an insurer required under section 275 of the Act to indemnify the first party insurer.

(2) A second party insurer under a policy insuring any class of automobile other than motorcycles, off-road vehicles and motorized snow vehicles is obligated under section 275 of the Act to indemnify a first party insurer,

- (a) if the person receiving statutory accident benefits from the first party insurer is claiming them under a policy insuring a motorcycle and,
 - (i) if the motorcycle was involved in the incident out of which the responsibility to pay statutory accident benefits arises, or
 - (ii) if motorcycles and motorized snow vehicles are the only types of vehicle insured under the policy; or

- (b) if the person receiving statutory accident benefits from the first party insurer is claiming them under a policy insuring a motorized snow vehicle and,
 - (i) if the motorized snow vehicle was involved in the incident out of which the responsibility to pay statutory accident benefits arises, or
 - (ii) if motorcycles and motorized snow vehicles are the only types of vehicle insured under the policy.
- (3) A second party insurer under a policy insuring a heavy commercial vehicle is obligated under section 275 of the Act to indemnify a first party insurer unless the person receiving statutory accident benefits from the first party insurer is claiming them under a policy insuring a heavy commercial vehicle. O. Reg. 780/93, ss. 1, 6.

SETTLEMENTS – STATUTORY ACCIDENT BENEFITS

9.1 (1) In this section, “settlement” means an agreement between an insurer and an insured person that finally disposes of a claim or dispute in respect of the insured person’s entitlement to one or more benefits under the *Statutory Accident Benefits Schedule*.

(2) Before a settlement is entered into between an insurer and an insured person, the insurer shall give the insured person a written notice that contains the following:

1. A description of the benefits that may be available to the insured person under the *Statutory Accident Benefits Schedule* and any other benefits that may be available to the insured person under a contract of automobile insurance.
2. A description of the impact of the settlement on the benefits described under paragraph 1, including a statement of the restrictions contained in the settlement on the insured person’s right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 280 to 284 of the Act.
3. A statement that the insured person may rescind the settlement within two business days after the settlement is entered into by delivering a written notice to the insurer.
4. A statement that the tax implications of the settlement may be different from the tax implications of the benefits described under paragraph 1.
5. If the settlement provides for the payment of a lump sum in an amount offered by the insurer and, with respect to a benefit under the *Statutory Accident Benefits Schedule* that is not a lump sum benefit, the settlement contains a restriction on the insured person’s right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 280 to 284 of the Act, a statement of the insurer’s estimate of the commuted value of the benefit and an explanation of how the insurer determined the commuted value.
6. A statement advising the insured person to consider seeking independent legal, financial and medical advice before entering into the settlement.

(3) A settlement may be rescinded by the insured person, within two business days after the settlement is entered into, by delivering a written notice to the insurer.

(4) If the insurer did not comply with subsection (2), the insured person may rescind the settlement after the period mentioned in subsection (3) by delivering a written notice to the insurer.

(5) A restriction on an insured person's right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 280 to 284 of the Act is not void under subsection 279(2) of the Act if,

- (a) the restriction is contained in a settlement; and
- (b) the insurer complied with subsection (2). O. Reg. 780/93, s. 7.

DISPUTE RESOLUTION

(Sections 280 to 284 of the Act)

10. A mediator is required, under subsection 280(4) of the Act, to attempt to effect a settlement of a dispute within sixty days after the date on which the application for the appointment of a mediator is filed.

11. An insured person shall pay a fee of \$100 upon filing an application for the appointment of an arbitrator under subsection 282(1) of the Act. O. Reg. 850/93, s. 1.

12. The expenses set out in the Schedule are prescribed for the purpose of subsection 282(11) of the Act.

13. A person who appeals the order of an arbitrator shall pay a fee of \$250 upon delivering the notice of appeal to the Commission under section 283 of the Act. O. Reg. 850/93, s. 2.

14. A person who applies under section 284 of the Act to vary or revoke an order shall pay a fee of \$100 when the application is made.

APPLICATION OF SECTIONS 412 TO 417 OF THE ACT

15. (1) Sections 412 to 417 of the Act apply in respect of contracts of automobile insurance written on Ontario Policy Form 1 or 2.

(2) Sections 412 to 417 of the Act apply in respect of all types of endorsements to contracts of automobile insurance written on Ontario Policy Form 1 or 2.

(3) Despite subsections (1) and (2), sections 412 to 417 of the Act do not apply to contracts of automobile insurance that insure groups of at least five vehicles that are under common ownership or management and that are used for business, commercial or public purposes or to any endorsements of those contracts.

PROHIBITED CLASSES OF RISK EXPOSURE

(Sections 412 to 417 of the Act)

16. (1) Insurers are prohibited from using elements of a risk classification system described in this section in classifying risks for any coverage or category of automobile insurance.

(2) No element of a risk classification system shall use past claims for which an insured person was not at fault.

(3) No element of a risk classification system shall use the existence or non-existence of a medical, surgical, dental or hospitalization plan or any other arrangement or plan providing coverage to a person who would be an insured person under the contract for services and treatment that the insurer would otherwise be required to pay for under the *Statutory Accident Benefits Schedule*.

(4) No element of a risk classification system shall use the existence or non-existence of an income continuation plan, a sick leave plan or any other arrangement or plan providing coverage to a person who would be an insured person under the contract for benefits that the insurer would otherwise be required to pay for under the *Statutory Accident Benefits Schedule*. Am. O. Reg. 780/93, ss. 1, 8(1)-(4).

(5) No element of a risk classification system shall use membership in an organized group unless the group is,

(a) a group of employees of the same employer; or

(b) a group of persons that is,

(i) a labour union,

(ii) a professional or occupational association,

(iii) an alumni association, or

(iv) a non-profit organization that has been in existence for at least two years, except an organization that is formed primarily for the purpose of purchasing or providing goods or services.

(6) A group referred to in clause (5)(a) may also include retired employees of the same employer.

(7) A group referred to in clause (5)(a) or (b) may also include:

1. Spouses of members of the group.

2. Children of members of the group or of their spouses who are under 25 years of age and,

i. reside in the same dwelling as a member of the group or the spouse of a member of the group, or

ii. attend an educational institution on a full-time basis.

(8) In subsection (7), “spouse” means either of a man and a woman who,

(a) are married to each other; or

(b) are living together in a conjugal relationship outside marriage, if they have lived together,

(i) continuously for a period of at least one year, or

(ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child or have demonstrated a settled intention to treat a child as a child of their family.

(9) No element of a risk classification system shall result in a member of a group referred to in clause (5)(a) or (b) being excluded from the group for the purpose of risk classification if,

(a) the insurance is sold under a group marketing plan within the meaning of section 17; and

(b) coverage is for a personal use private passenger vehicle within the meaning of the Plan of Operation established by the Facility Association under subsection 7(3) of the *Compulsory Automobile Insurance Act*.

(10) No element of a risk classification system shall result in a change in the classification of an insured before the next renewal date of the insured’s policy because,

(a) a group marketing plan within the meaning of section 17 terminates; or

(b) the insured ceases to be a member of a group referred to in clause (5)(a) or (b).
O. Reg. 780/93, ss. 1, 8(1)-(4); O. Reg. 5534/94, s. 2.

GROUP MARKETING PLANS

17. (1) In this section, “group marketing plan” means,

(a) an arrangement between an insurer and a group of employees of the same employer to market automobile insurance to members of the group;

(b) an arrangement between an insurer and an employer to market automobile insurance to a group of employees of the employer; or

(c) an arrangement between an insurer and a group referred to in clause 16(5)(b) to market automobile insurance to members of the group.

(2) An insurer shall not sell automobile insurance under a group marketing plan if any person is required to purchase insurance under the plan or is subject to a penalty for failing to purchase insurance under the plan.

(3) An insurer, agent or broker selling automobile insurance under a group marketing plan shall not accept an application from a person for insurance coverage unless

the insurer, agent or broker has made full and fair disclosure to the person of all features of the group marketing plan and the insurance coverage, including,

- (a) the group marketing plan's provisions relating to group discounts, policyholder services, termination of the plan and termination of eligibility; and
- (b) the financial interests in the group marketing plan of the person or body that entered into the plan with the insurer.

(4) A person who collects premiums under a group marketing plan, other than an agent or broker, shall provide adequate administrative facilities for the collection of premiums and shall be deemed to be the agent of the insurer for the purpose of collecting premiums.

(5) All premium funds received or receivable by a person under a group marketing plan, other than by an agent or broker, shall be deemed to be trust funds held for the benefit of the insurer.

(6) A person who receives or is entitled to receive premiums funds under a group marketing plan shall not assign, pledge, mortgage or in any way charge the funds.

(7) An assignment, pledge, mortgage or other charge of premium funds contrary to subsection (6) is void. O. Reg. 553/94, s. 3.

SCHEDULE

DISPUTE RESOLUTION EXPENSES

(Subsection 282(11) of the Act)

1. The filing fees paid by the insured person when applying for arbitration, appealing the order of an arbitrator or applying to vary or revoke an order may be awarded.

2. (1) The legal fees payable by the insured person for the following matters may be awarded:

- 1. For all services performed before a hearing.
- 2. For the preparation for an arbitration, an appeal or a variation hearing.
- 3. For attendance at an arbitration, an appeal or a variation hearing.

(2) The maximum amount that may be awarded for legal fees is the amount calculated using the hourly rates established under the *Legal Aid Act* for professional services in civil matters before the Ontario Court (General Division).

(3) For the purposes of subsection (2), the hourly rate may be adjusted to include, in appropriate circumstances, the experience allowance established under the *Legal Aid Act* for more experienced solicitors.

3. (1) The agent's fees payable by the insured person for the following matters may be awarded:

1. For the preparation for an arbitration, an appeal or a variation hearing.
2. For attendance at an arbitration, an appeal or a variation hearing.

(2) The maximum amount that may be awarded for agent's fees is the amount calculated using the hourly rates established under the *Legal Aid Act* for law clerks, articling students and investigators.

4. The amount of the following disbursements made by or on behalf of the insured person may be awarded:

1. For long distance telephone, facsimile and other telecommunication charges.
2. For typing, printing and reproducing copies of documents.
3. For the delivery, by mail or courier, of items relating to the arbitration, appeal or variation hearing.
4. For other out-of-pocket expenses incurred in furtherance of the arbitration, appeal or variation hearing.

5. (1) The amount of the following witness fees paid by or on behalf of the insured person may be awarded:

1. For the attendance of witnesses, in accordance with subsection (2).
2. For the attendance of an expert witness who gives opinion evidence at the arbitration or hearing or whose attendance is necessary, in accordance with subsection (3).
3. For a report prepared by an expert, provided to the other parties to the arbitration or hearing and necessary for the conduct of the arbitration or hearing, in accordance with subsection (4).

(2) The maximum amount that may be awarded for the attendance of a witness is the amount of the attendance allowance for the witness that may be allowed under Rule 58.05 of the rules of court as a disbursement.

(3) The maximum amount that may be awarded for the attendance of an expert witness is \$200 per hour of attendance, up to a maximum of \$1600 per day.

(4) The maximum amount that may be awarded for a report prepared by an expert is \$800.

6. (1) The amount of the following expenses made by or on behalf of the insured person, his or her attendant, if one is required, his or her lawyer and his or her agent may be awarded:

1. For travelling expenses, in accordance with subsection (2).
2. For overnight accommodation and meals, in accordance with subsection (3).

(2) The maximum amount of travelling expenses that may be awarded for a person,

(a) for an arbitration or a hearing that takes place in the municipality in which the

person resides is the amount incurred by the person for each day of his or her necessary attendance at the arbitration or hearing;

- (b) for an arbitration or a hearing that takes place outside the municipality in which the person resides and within 300 kilometres of his or her residence is the lesser of,
 - (i) 30 cents per kilometre for one return trip between the person's residence and the place in which the arbitration or hearing takes place, or
 - (ii) the amount incurred by the person;
 - (c) for an arbitration or a hearing that takes place 300 or more kilometres from the person's residence is the lesser of,
 - (i) the amount of the return economy airfare for the person plus 30 cents per kilometre for one return trip between his or her residence and the airport and for one return trip between the airport and the place of the arbitration or hearing, or
 - (ii) the amount incurred by the person.
- (3) The maximum amount that may be awarded for overnight expenses and meals is \$150 per night for each overnight stay required for the person.

REGULATION 665

CALCULATIONS UNDER CLAUSE 60(1)(b) OF THE ACT

R.R.O. 1990, Reg. 665

Interpretation

1. (1) In this Regulation,

“calculation date”.—“calculation date” means the date as of which calculations are made for the purposes of this Regulation;

“foreign branch insurer”.—“foreign branch insurer” means an insurer registered under the *Foreign Insurance Companies Act* (Canada);

“investment valuation reserve”.—“investment valuation reserve” means the investment valuation reserve calculated in accordance with the Schedule;

“market value”.—“market value”, in relation to an asset, means the amount determined under section 7.

(2) In this Regulation, a company is considered to be a subsidiary of an insurer if the insurer owns directly or indirectly a majority of the shares carrying the right to elect a majority of the members of the board of directors of the company.

2. (1) Financial information used in calculations under this Regulation shall be determined in accordance with generally accepted accounting principles used in Canada except when otherwise required under this Regulation.

(2) In this Regulation,

(a) the amount of a claim or a reserve for a claim includes all costs incurred or likely to be incurred by the insurer in adjusting and settling the claim; and

(b) when an insurer has issued contracts on a premium note system, unpaid assessments levied in respect of all outstanding premium notes held by the insurer shall be deemed to be a reserve for unearned premiums.

(3) For the purposes of subsection (2), the amount of a reserve and the amount of the liabilities of an insurer are net of adjustments for reinsurance, if any, made in accordance with section 11.

Application

3. This Regulation does not apply to an insurer that comes within a class set out in paragraph 4, 5, 7, 8 or 9 of subsection 42(1) of the Act.

Determination of Reasonable Relationship

4. For the purposes of clause 60(1)(b) of the Act, the amount of the assets of an insurer bears a reasonable relationship to the outstanding liabilities, premiums and loss

experience of the insurer if the value of the assets, as determined under section 5 or 6, is greater than or equal to the aggregate amount, as determined under section 8.

Asset Value

5. (1) The value of the assets of an insurer, other than a foreign branch insurer, is the amount determined by the formula,

$$A - (B + C + D + E + F)$$

in which,

“A” is the sum of,

- (a) the value of the assets determined in accordance with this Regulation, and
- (b) the amount the insurer sets out in Column 4 of item 8 in Table 1 to the Schedule;

“B” is an amount equal to the sum of,

- (a) any amounts owing on the calculation date to the insurer by agents or brokers that the insurer invoiced to the agents or brokers at least sixty-five days before the calculation date,
- (b) any unpaid capital or unpaid premium in respect of subscribed shares of capital stock of the insurer,
- (c) the book value of automobiles and of office furnishings and equipment other than computer hardware,
- (d) the book value of any investments that are not authorized by a special or general act to which the insurer is subject,
- (e) any amount recorded by the insurer as a deferred income tax debit or a prepaid expense, and
- (f) any amount recorded by the insurer as goodwill, a capitalized leasehold expense or a capitalized development cost;

“C” is the amount of the investment valuation reserve;

“D” is the deferred policy acquisition expense;

“E” is the amount, if any, determined under subsection (3); and

“F” is the amount, if any, greater than zero that is determined under subsection (6).

(2) The value of an insurer’s investment in a subsidiary shall be determined using the equity method and not using the consolidated method.

(3) If an insurer has assets receivable or liabilities payable in a currency other than Canadian dollars, the amount for “E” in subsection (1) is determined by the formula,

$$(A - B) - (C - D)$$

in which,

“A” is the book value in Canadian dollars of all such assets, excluding those assets included in the calculation of “B” under subsection (1);

“B” is the book value in Canadian dollars of all such liabilities;

“C” is the Canadian dollar equivalent calculated in accordance with subsection (4) of all such assets, excluding those assets included in the calculation of “B” under subsection (1); and

“D” is the Canadian dollar equivalent calculated in accordance with subsection (5) of all such liabilities.

(4) The Canadian dollar equivalent of the assets referred to in the description of “C” in subsection (3) is determined for each asset by multiplying the value of the asset expressed in the foreign currency by the rate of exchange in effect on the calculation date.

(5) The Canadian dollar equivalent of the liabilities referred to in the description of “D” in subsection (3) is determined for each liability by multiplying the value of the liability expressed in the foreign currency by the rate of exchange in effect on the calculation date.

(6) Subject to subsection (7), if the assets of the insurer include an investment in common shares of another corporation that transacts the business of insurance, other than the business of life insurance, the amount for “F” in subsection (1) is determined by the formula,

$$A - (B/C \times (D - E))$$

in which,

“A” is the book value of the insurer’s investment in the common shares of the investee corporation;

“B” is the number of paid-up common shares of the investee corporation owned by the insurer;

“C” is the number of paid-up common shares of the investee corporation;

“D” is the value of the assets of the investee corporation calculated in accordance with this section; and

“E” is the aggregate amount for the investee corporation, calculated in accordance with section 8.

(7) If the insurer has insufficient information to calculate either “D” or “E” in subsection (6), the value for “D” and “E” is zero.

6. The value of the assets of a foreign branch insurer is the amount determined by the formula,

$$A - B$$

in which,

“A” is the sum of,

- (a) the book value of all deposits under the *Foreign Insurance Companies Act* (Canada) by the insurer with the federal Minister responsible under that Act,
- (b) the book value of all assets vested in trust for the insurer under the *Foreign Insurance Companies Act* (Canada),
- (c) the amount the insurer sets out in Column 4 of item 8 in Table 1 to the Schedule, and
- (d) any amounts owing on the calculation date to the insurer by agents or brokers that the insurer invoiced to the agents or brokers less than sixty-five days before the calculation date; and

“B” is the insurer’s investment valuation reserve in respect of the assets included in calculating “A”.

Book Value and Market Value

7. (1) The market value of an asset is the most probable price that a buyer would pay to a seller, both acting prudently, knowledgeably and willingly, in an arm’s length transaction in an open market under conditions requisite to a fair sale.

(2) If the interest payable to an insurer in respect of an asset that is a debt security is more than six months in arrears, the book value of the asset shall be deemed to be its market value.

Aggregate Amount

8. (1) In this section, “alternate margin factor”, in relation to a class of insurance, means the alternate margin factor determined under section 10.

- (2) The aggregate amount for an insurer is the sum of,
 - (a) the amount of the reserve in respect of non-cancellable accident and sickness contracts;
 - (b) the amount of the reserve for claims in respect of accident and sickness contracts that are payable in installments;
 - (c) the total amount of the insurer’s liabilities, as determined under section 9, less the amount of any liabilities that are included in clauses (a) and (b);
 - (d) the amount of the reserve for claims in respect of accident and sickness contracts, other than contracts that are described in clause (a) or (b), multiplied by 0.15;
 - (e) the amount of the reserve for unearned premiums in respect of accident and sickness contracts, other than non-cancellable contracts, multiplied by 0.15 or by the alternate margin factor, if any; and

- (f) an amount in respect of contracts, other than accident and sickness contracts, that is the greatest of,
- (i) the sum of,
 - (A) the amount of the reserve for unearned premiums in respect of the contracts, multiplied by 0.15 or by the alternate margin factor, if any, and
 - (B) the amount of the reserve for claims in respect of the contracts multiplied by 0.15,
 - (ii) the sum of,
 - (A) the amount of the gross premiums written by the insurer in respect of the contracts written in the twelve months preceding the calculation date, multiplied by 0.15, and
 - (B) the lesser of,
 - 1. \$500,000, and
 - 2. the amount of the gross premiums written as described in sub-subclause (A), multiplied by 0.05, and
 - (iii) the amount that is 0.22 times,
 - (A) for an insurer that has been in business for thirty-six months or longer, the average annual amount of claims incurred by the insurer during the thirty-six months preceding the calculation date in respect of the contracts, or
 - (B) for an insurer to whom sub-subclause (A) does not apply, the product that is obtained by multiplying the average monthly amount of claims incurred by the insurer during the period that the insurer has been in business by twelve in respect of the contracts,plus the lesser of,
 - (C) \$500,000, and
 - (D) the amount calculated under sub-subclause (A) or (B), as the case may be, multiplied by 0.07.

Value of Liabilities

9. (1) The value of the liabilities of an insurer is the sum of,
- (a) the value of the liabilities determined in accordance with this Regulation;
 - (b) the lesser of,
 - (i) 50 per cent of the accumulated profit realized from the insurer's hail

insurance business, during the time the insurer has transacted the business of hail insurance, or

- (ii) 50 per cent of the insurer's net premiums written for hail insurance written during the twelve months preceding the date that is one year before the calculation date;
- (c) the absolute value of the reserve in respect of non-cancellable accident and sickness contracts, where the amount of the reserve is less than zero; and
- (d) the amount, if any, that is determined under subsection (2).

(2) If an insurer has reinsured any risk under contracts of insurance written by it with a reinsurer that is not licensed under the Act, the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada), the amount used in the calculation under subsection (1) is the sum of the amounts that are greater than zero, calculated separately for each such reinsurer, using the formula,

$$(A + B + C + D + E) - (F + G)$$

in which,

“A” is the total of the insurer's reserves for unearned premiums in respect of the risks reinsured other than non-cancellable accident and sickness risk;

“B” is the total of the insurer's liabilities in respect of the risks reinsured with the reinsurer under non-cancellable accident and sickness contracts;

“C” is the insurer's additional policy reserves in respect of the risks reinsured with the reinsurer, which equals the sum of,

- (a) 0.105 times the reinsurer's original premium for every surety contract,
- (b) 0.3 times the reinsurer's original premium for every fidelity contract, and
- (c) the reinsurer's reinsurance premium less the reinsurer's commission for every current nuclear contract;

“D” is the amount of the reserve for claims that the insurer is entitled to recover, but has not recovered, from the reinsurer;

“E” is the amount payable to the insurer by the reinsurer;

“F” is the amount payable to the reinsurer by the insurer; and

“G” is, subject to subsection (3), the value of all security including cash given to the insurer by the reinsurer.

(3) For the purpose of calculating “G” in subsection (2), if a reinsurer has given one or more letters of credit to an insurer as security for contracts insuring risks in Canada, the amount by which the total value of the letters of credit exceeds 0.15 times the sum of “A” and “D” as calculated under that subsection shall not be included as part of the value of all security.

Alternate Margin Factor

10. (1) In this section,

“claims ratio”.—“claims ratio”, in relation to contracts issued by an insurer in a class of insurance, means the ratio of the claims incurred under the contracts during a given period to the premiums earned under the contracts during that period;

“expected claims ratio”.—“expected claims ratio” means a claims ratio that the insurer reasonably expects for the period of the unexpired terms of the contracts to which it applies.

(2) If an insurer’s expected claims ratio for a class of insurance is less than 0.95, the insurer may select a claims ratio for the class that is greater than or equal to the greater of,

- (a) the expected claims ratio; and
- (b) the actual claims ratio for the twelve months immediately preceding the calculation date.

(3) The alternate margin factor for a class of insurance is calculated by adding 0.20 to the claims ratio selected by the insurer under subsection (2), and subtracting 1.00 from the total.

(4) For the purposes of clause 8(2)(e) and sub-subclause 8(2)(f)(i)(A), if the applicable alternate margin factor is less than zero, it shall be deemed to be zero.

Reinsurance

11. (1) In this section, “reinsurer”, in relation to an insurer, means a second insurer that insures all or part of the liabilities of the insurer under contracts issued by the insurer for risks insured in Canada.

(2) In this section, an insurer’s reinsurance ratio is described by the fraction,

$$\frac{\text{reinsured claims}}{\text{total claims}}$$

in which,

“reinsured claims”.—“reinsured claims” means the total amount of claims, excluding claims under accident and sickness contracts, that were incurred during the twelve months preceding the calculation date and that the insurer has recovered or is entitled to recover from reinsurers;

“total claims”.—“total claims” means the total amount of claims, excluding claims under accident and sickness contracts, incurred by the insurer during the same period.

(3) For the purpose of calculating the aggregate amount under section 8, if an insurer has reinsured any risk under contracts of insurance issued by it,

- (a) subject to subsection (4), the amounts determined under clauses 8(2)(a) to (e) and subclause 8(2)(f)(i) may be reduced by the amount attributable to the risk transferred to reinsurers in each instance; and
- (b) the amounts determined under subclauses 8(2)(f)(ii) and (iii) may be reduced,
 - (i) for an insurer whose licence under the Act restricts it to undertaking reinsurance, by an amount that does not exceed the amount determined under the subclause multiplied by the reinsurance ratio, and
 - (ii) if subclause (i) does not apply, by an amount that does not exceed the amount determined under the subclause multiplied by the lesser of 0.5 or the reinsurance ratio.

(4) For the purposes of clause (3)(a), the amount attributable to the risk transferred by the insurer to reinsurers that are not licensed under the Act, the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada) shall be deemed to be the amount of the security respecting the transferred risk, if any, that has been given to the insurer by the reinsurers and is kept in Canada.

Transitional

12. Subsection 9(3) does not apply with respect to a letter of credit that is given as security for a contract entered into before the 1st day of January, 1989.

SCHEDULE

CALCULATION OF THE INVESTMENT VALUATION RESERVE

1. In the Tables to this Schedule,

“long term”.—“long term”, in relation to a debt security, means maturing five years or more from the calculation date;

“mortgage loans”.—“mortgage loans” include hypothecs, charges and agreements of sale;

“real estate”.—“real estate” includes leaseholds;

“short term”.—“short term”, in relation to a debt security, means maturing within five years from the calculation date.

2. (1) For the purposes of calculating an insurer’s investment valuation reserve, an insurer must complete Tables 1 and 2 to this Schedule.

(2) An insurer’s investment valuation reserve is the amount set out as item 11 in Column 2 of Table 2 to this Schedule.

3. (1) The amount to be entered for an item in Column 4 of Table 1 to this Schedule is calculated by subtracting the book value set out in Column 2 from the market value set out in Column 3, and,

- (a) if that number is positive, entering it in Column 4; or
 (b) if that number is not positive, entering zero in Column 4.

(2) The amount to be entered for an item in Column 5 of Table 1 to this Schedule is calculated by subtracting the market value in Column 3 from the book value in Column 2, and,

- (a) if that number is positive, entering it in Column 5; or
 (b) if that number is not positive, entering zero in Column 5.

TABLE 1

CALCULATIONS RESPECTING THE INVESTMENT VALUATION RESERVE

Item	Column 1 Category of Assets	Column 2 Book Value (\$000s)	Column 3 Market Value (\$000s)	Column 4 Market Excess (\$000s)	Column 5 Market Deficiency (\$000s)
	<i>Debt Securities</i>				
1.	Short term bonds, debentures and other evidences of indebtedness			A	
2.	Short term mortgage loans			D	
3.	Long terms bonds, debentures and other evidences of indebtedness				
4.	Long term mortgage loans				
5.	Total debt securities				
	<i>Equity Assets</i>				
6.	Preferred and common shares			B	E
	<i>Real Estate</i>				
7.	Real estate			F	
8.	Total Debt Securities, Equity Assets and Real Estate				
9.	Total Long Term Bonds, Debentures and other Evidences of Indebtedness, Long Term Mortgage Loans and Real Estate				G

Sched.

REGULATIONS UNDER THE INSURANCE ACT

Item	Column 1 Category of Assets	Column 2 Book Value (\$000s)	Column 3 Market Value (\$000s)	Column 4 Market Excess (\$000s)	Column 5 Market Deficiency (\$000s)
10.	Total Debt Securities and Real Es- tate			C	
11.	Total Long Term Bonds, Deben- tures and other Evidences of In- debtedness, Long Term Mortgage Loans, Equity Assets and Real Es- tate				H

TABLE 2

CALCULATION OF THE INVESTMENT VALUATION RESERVE

Item	Column 1 Description of Calculation	Column 2 Amount (\$000s)
1.	<i>Debt Securities</i> Net deficiency for reserve purposes for long term debt securities and real estate, equal to G minus B, from Table 1, if that amount is positive; zero, if it is negative	I
2.	<i>Equity Assets</i> Net deficiency for equity assets, equal to E minus C, from Table 1, if that amount is positive; zero, if it is negative	J
3.	The amount of J for the preceding year	K
4.	The two-year average of the net deficiencies for equity assets, which equals 0.5 times the sum of J and K	L
5.	Net deficiency for reserve purposes for equity assets, equal to the lesser of J or L	M
6.	<i>Mortgage Loans</i> Market deficiency for short term mortgage loans, equal to D, from Table 1, if the book value of the total mortgage loans exceeds 20 per cent of the book value of the assets; if it does not, the amount is equal to zero	N
7.	The amount equal to D minus A, from Table 1, if that amount is positive and if the book value of the total mortgage loans exceeds 20 per cent of the book value of the assets; if they do not, the amount is equal to zero	P
8.	<i>Investment Valuation Reserve</i> The sum of I, M and N	Q

Column 1		Column 2
Item	Description of Calculation	Amount (\$000s)
9.	The amount of F from Table 1	R
10.	The sum of H and P	S
11.	The amount of the Investment Valuation Reserve, equal to the least of Q, R and S	

REGULATION 666

CLASSES OF INSURANCE

R.R.O. 1990, Reg. 666

1. The classes of insurance set out in this Regulation are distinct classes of insurance for the purpose of licensing insurers under the Act to carry any one or more of the classes that an insurer's licence prescribes.

2. For the purpose of section 43 of the Act, a licence granted to an insurer shall be for one or more of the following classes of insurance:

1. Accident and Sickness Insurance, being insurance within the meaning of accident insurance and sickness insurance.

2. Aircraft Insurance.

3. Automobile Insurance.

4. Boiler and Machinery Insurance.

5. Credit Insurance.

6. Fidelity Insurance, being,

i. insurance against loss caused by the unfaithful performance of duties by a person in a position of trust, or

ii. insurance whereby an insurer undertakes to guarantee the proper fulfillment of the duties of an office.

7. Hail Insurance.

8. Legal Expense Insurance, being insurance against the cost incurred by a person or persons for specified legal services rendered to such person or persons, including fees or other costs incurred relative to the provision of such services.

9. Liability Insurance, being insurance not incidental to some other class of insurance, against liability arising out of,

i. bodily injury to or the death of a person, including an employee, or

ii. the loss of or damage to property,

and includes insurance against expenses arising out of bodily injury to a person other than the insured or a member of the insured's family, whether liability exists or not, if the insurance is included in a contract for the insurance described in subparagraph i, but does not include aircraft insurance or automobile insurance.

10. Insurance.

11. Marine Insurance.

12. Mortgage Insurance, being insurance against loss caused by default on the part of a borrower under a loan secured by a mortgage upon real property, a hypothec upon immovable property or an interest in real or immovable property.
13. Property Insurance, being insurance within the meaning of fire insurance, inland transportation insurance, livestock insurance, plate glass insurance, property damage insurance, sprinkler leakage insurance, theft insurance and weather insurance.
14. Surety Insurance, being insurance whereby an insurer undertakes to guarantee,
 - i. the due performance of a contract or undertaking, or
 - ii. the payment of a penalty or indemnity for any default,but does not include insurance coming within the class of credit insurance or mortgage insurance.
15. Title Insurance.

3. (1) Except where an insurer is expressly limited by the terms of the licence issued, an insurer applying for a licence shall be licensed for one or more of the classes of insurance referred to in section 2.

(2) Where an insurer was licensed prior to the 1st day of January, 1972 for a class of insurance that is now part of a class of insurance referred to in section 2, its rights and powers are extended to all the rights and powers within that class referred to in section 2, unless,

- (a) expressly so limited by the terms of the renewal of the licence;
- (b) expressly so limited by the Superintendent to take into account limitations contained in the Act or instrument of incorporation of the insurer; or
- (c) expressly so limited by the Superintendent to take into account any restrictions or limitations imposed on the insurer under the provisions of the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada).

(3) A licence issued to an insurer to undertake title insurance in Ontario is subject to the limitations and conditions that no policy of title insurance shall be issued unless the insurer has first obtained a concurrent certificate of title to the property to be insured from a solicitor then entitled to practise in Ontario and who is not at that time in the employ of the insurer.

REGULATION 667

COMPENSATION CORPORATIONS

R.R.O. 1990, Reg. 667

Designation of Compensation Associations

1. For the purposes of subsection 44(1) of the Act, a corporation or association listed in Column 1 of the Schedule to this Regulation is a designated compensation association for the classes of insurance set out opposite thereto in Column 2.

Designation of Classes of Insurance

2. The classes of insurance designated under clause 44(1)(l) of the Act with respect to compensation associations are,

- (a) crop insurance, which is insurance for the loss of, or damage to, crops in the field caused by drought, flood, hail, wind, frost, lightning, excessive rain, snow, hurricane, tornado, fire, wildlife, insect infestation, plant disease or other peril;
- (b) directors and officers insurance, which is insurance,
 - (i) to indemnify the directors and officers of a corporation for losses resulting from a claim against them for a negligent or wrongful act, or
 - (ii) to indemnify a corporation for losses which the corporation is permitted or required by law to indemnify its directors and officers with respect to claims against them for negligent or wrongful acts;
- (c) errors and omissions insurance, which is insurance for amounts that an insured is legally obligated to pay as damages because of an act, error or omission by the insured or by a person for whose acts, errors or omissions the insured is legally responsible, if the act, error or omission arises out of the performance of, intended performance of or failure to perform professional services, other than medical services, for another person;
- (d) fidelity insurance, which is insurance,
 - (i) for loss caused by the unfaithful performance or duties by a person in a position of trust, or
 - (ii) guaranteeing the proper fulfilment of the duties of an office;
- (e) legal expense insurance, which is insurance for costs incurred by a person for specified legal services to the person including fees or other costs relating to the provision of the services;
- (f) liability insurance, which is insurance against liability arising out of,
 - (i) bodily injury to or the death of a person, including insurance for expenses

arising out of bodily injury to a person other than an insured or a member of the insured's family, whether or not liability exists, if such insurance is included in the insured's contract insuring against bodily injury or death, or

(ii) the loss of or damage to property,

but does not include,

(iii) insurance that is incidental to another class of insurance,

(iv) aircraft insurance, or

(v) automobile insurance;

(g) limited weather insurance, which is insurance for loss or damage resulting from a windstorm, a cyclone, a tornado, rain, hail, a flood or frost, other than a type of loss for which hail insurance or crop insurance provides;

(h) mortgage insurance, which is insurance for loss caused by a borrower's default under a loan secured by a mortgage on real property, by a hypothec on immovable property or by an interest in real or immovable property; and

(i) surety insurance, which is insurance other than credit insurance or mortgage insurance,

(i) guaranteeing the performance of a contract or an undertaking, or

(ii) guaranteeing the payment of a penalty or of an indemnity for a default.

SCHEDULE

COMPENSATION, ASSOCIATIONS AND CLASSES OF INSURANCE

Item	COLUMN 1	COLUMN 2
	Name of Compensation Association	Class of Insurance
1.	Property and Casualty Insurance Compensation Corporation/Société d'Indemnisation en Matière d'Assurances IARD	Automobile insurance; boiler and machinery insurance; fire insurance; inland transportation insurance; legal expense insurance; liability insurance; limited weather insurance; livestock insurance; plate glass insurance; property damage insurance; sprinkler leakage insurance and theft insurance.

REGULATION 668

FAULT DETERMINATION RULES

R.R.O. 1990, Reg. 668

General

1. In this Regulation, "centre line" of a roadway means,

- (a) a single or double, unbroken or broken line marked in the middle of the roadway, or
- (b) if no line is marked, the middle of the roadway or that portion of the roadway that is not obstructed by parked vehicles, a snowbank or some other object blocking traffic.

2. (1) An insurer shall determine the degree of fault of its insured for loss or damage arising directly or indirectly from the use or operation of an automobile in accordance with these rules.

(2) The diagrams in this Regulation are merely illustrative of the situations described in these rules.

3. The degree of fault of an insured is determined without reference to,

- (a) the circumstances in which the incident occurs, including weather conditions, road conditions, visibility or the actions of pedestrians; or
- (b) the location on the insured's automobile of the point of contact with any other automobile involved in the incident.

4. (1) If more than one rule applies with respect to the insured, the rule that attributes the least degree of fault to the insured shall be deemed to be the only rule that applies in the circumstances.

(2) Despite subsection (1), if two rules apply with respect to an incident involving two automobiles and if under one rule the insured is 100 per cent at fault and under the other the insured is not at fault for the incident, the insured shall be deemed to be 50 per cent at fault for the incident.

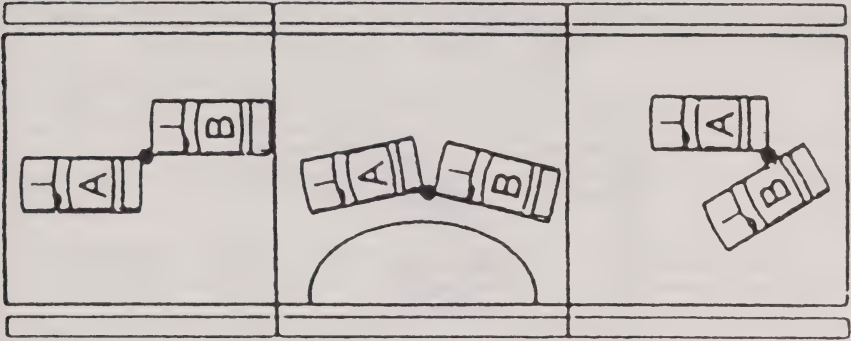
5. (1) If an incident is not described in any of these rules, the degree of fault of the insured shall be determined in accordance with the ordinary rules of law.

(2) If there is insufficient information concerning an incident to determine the degree of fault of the insured, it shall be determined in accordance with the ordinary rules of law unless otherwise required by these rules.

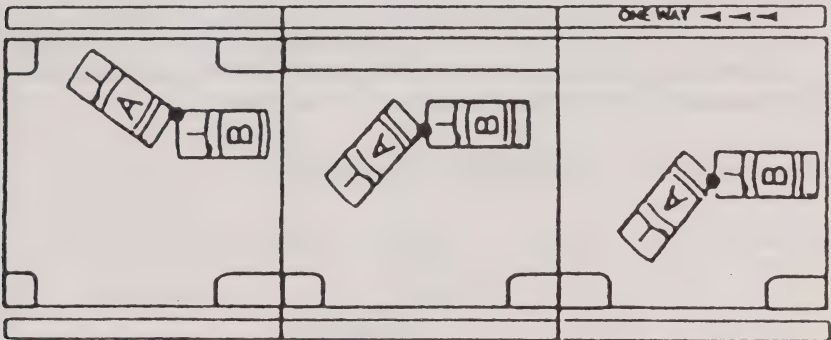
Rules for Automobiles Travelling in the Same Direction and Lane

6. (1) This section applies when automobile "A" is struck from the rear by automobile "B", and both automobiles are travelling in the same direction and in the same lane.

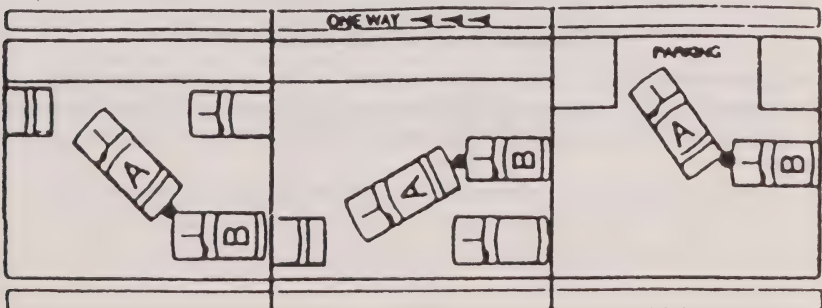
(2) If automobile "A" is stopped or is in forward motion, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.



(3) If automobile "A" is turning, either to the right or to the left, in order to enter a side road, private road or driveway, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

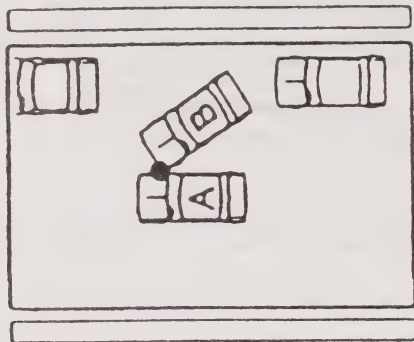


(4) If automobile "A" is in forward motion and is entering a parking place on either the right or the left side of the road, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

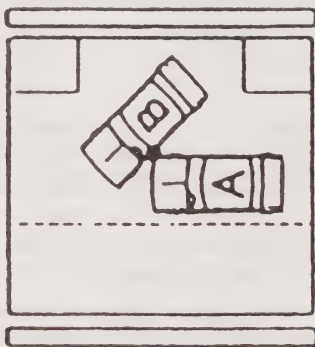


7. (1) This section applies when automobile "A" collides with automobile "B" while automobile "B" is entering a road from a parking place, private road or driveway.

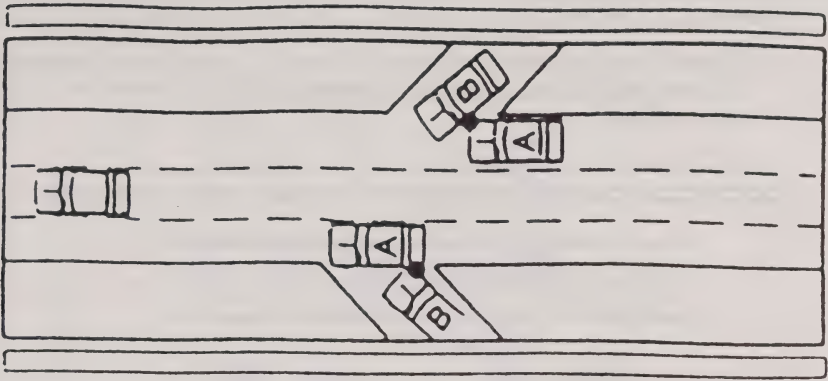
(2) If the incident occurs when automobile "B" is leaving a parking place and automobile "A" is passing the parking place, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.



(3) If the incident occurs when automobile "B" is entering a road from a private road or a driveway and automobile "A" is passing the private road or driveway and, if there are no traffic signals or signs, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.



8. If automobile "A" collides with automobile "B" on a controlled access road while automobile "B" is entering the road from an entrance lane, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

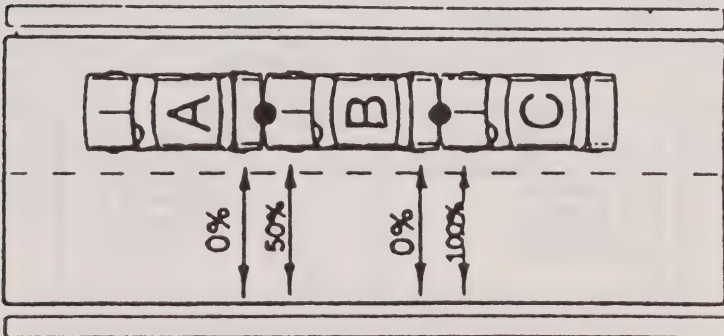


9. (1) This section applies with respect to an incident involving three or more automobiles that are travelling in the same direction and in the same lane (a "chain reaction").

(2) The degree of fault for each collision between two automobiles involved in the chain reaction is determined without reference to any related collisions involving either of the automobiles and another automobile.

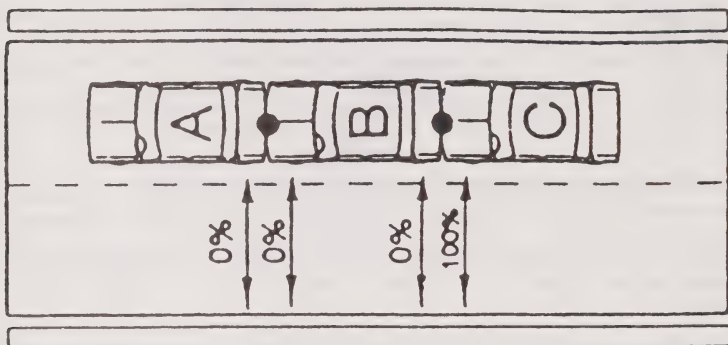
(3) If all automobiles involved in the incident are in motion and automobile "A" is the leading vehicle, automobile "B" is second and automobile "C" is the third vehicle,

- (a) in the collision between automobiles "A" and "B", the driver of automobile "A" is not at fault and the driver of automobile "B" is 50 per cent at fault for the incident;
- (b) in the collision between automobiles "B" and "C", the driver of automobile "B" is not at fault and the driver of automobile "C" is 100 per cent at fault for the incident.



(4) If only automobile "C" is in motion when the incident occurs,

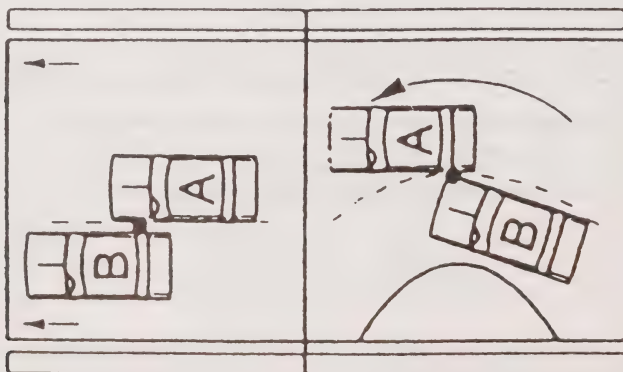
- (a) in the collision between automobiles "A" and "B", neither driver is at fault for the incident; and
- (b) in the collision between automobiles "B" and "C", the driver of automobile "B" is not at fault and the driver of automobile "C" is 100 per cent at fault for the incident.



*Rules for Automobiles Travelling in the
Same Direction in Adjacent Lanes*

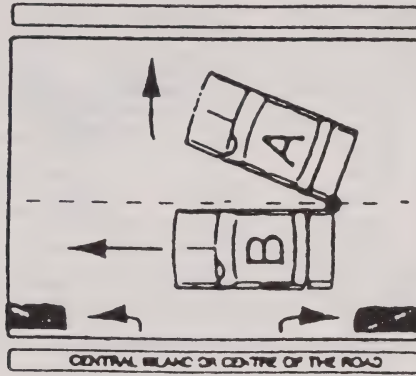
10. (1) This section applies when automobile "A" collides with automobile "B", and both automobiles are travelling in the same direction and in adjacent lanes.

(2) If neither automobile "A" nor automobile "B" changes lanes, and both automobiles are on or over the centre line when the incident (a "sideswipe") occurs, the driver of each automobile is 50 per cent at fault for the incident.

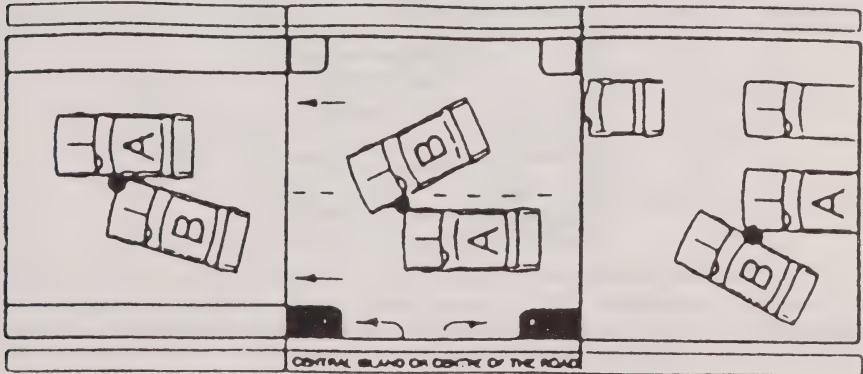


- (3) If the location on the road of automobiles "A" and "B" when the incident (a

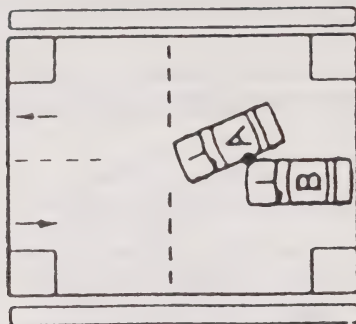
“sideswipe”) occurs cannot be determined, the driver of each automobile is 50 per cent at fault for the incident.



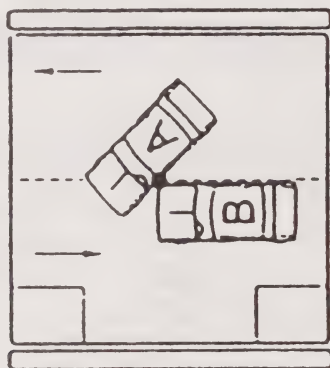
(4) If the incident occurs when automobile “B” is changing lanes, the driver of automobile “A” is not at fault and the driver of automobile “B” is 100 per cent at fault for the incident.



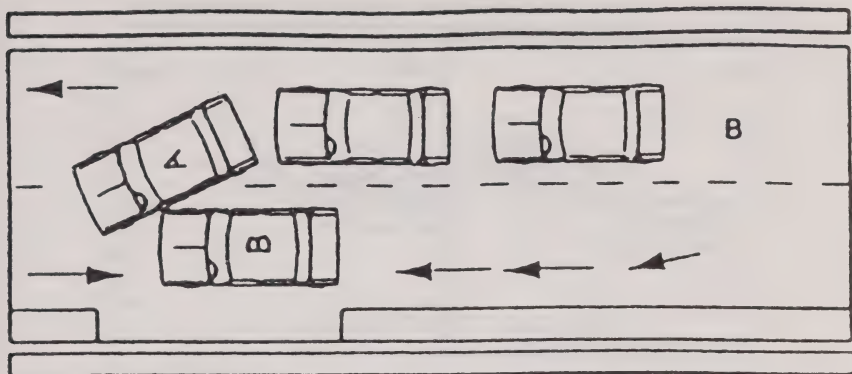
(5) If the incident occurs when automobile “A” is turning left at an intersection and automobile “B” is overtaking automobile “A” to pass it, the driver of automobile “A” is 25 per cent at fault and the driver of automobile “B” is 75 per cent at fault for the incident.



(6) If the incident occurs when automobile "A" is turning left at a private road or a driveway and automobile "B" is overtaking automobile "A" to pass it, the driver of each automobile is 50 per cent at fault for the incident.

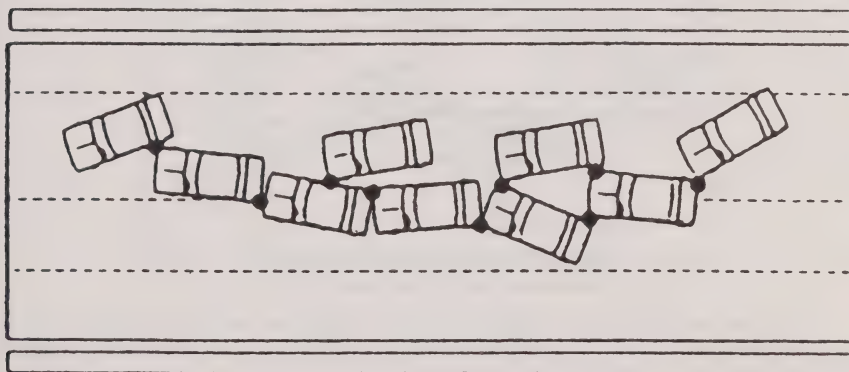


(7) If the incident occurs when automobile "A" is turning left at a private road or a driveway and automobile "B" is passing one or more automobiles stopped behind automobile "A", the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.



11. (1) This section applies with respect to an incident involving three or more automobiles that are travelling in the same direction and in adjacent lanes (a "pile-up").

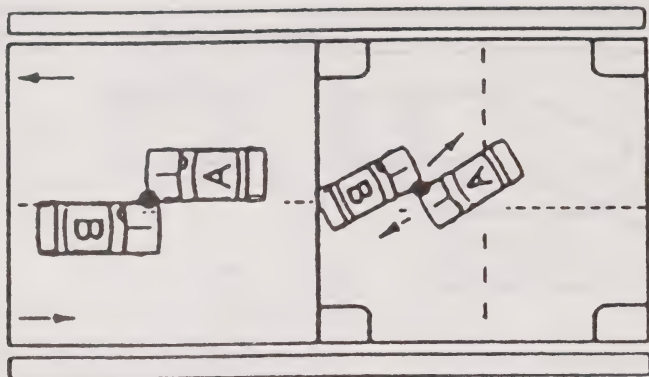
(2) For each collision between two automobiles involved in the pile-up, the driver of each automobile is 50 per cent at fault for the incident.



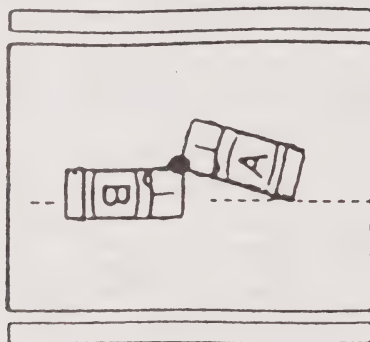
*Rules for Automobiles Travelling in
Opposite Directions*

12. (1) This section applies when automobile "A" collides with automobile "B", and the automobiles are travelling in opposite directions and in adjacent lanes.

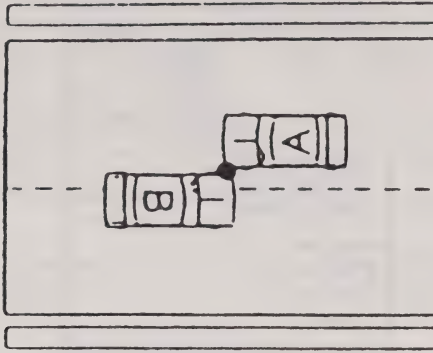
(2) If neither automobile "A" nor automobile "B" changes lanes and both automobiles are on or over the centre lane when the incident (a "sideswipe") occurs, the driver of each automobile is 50 per cent at fault for the incident.



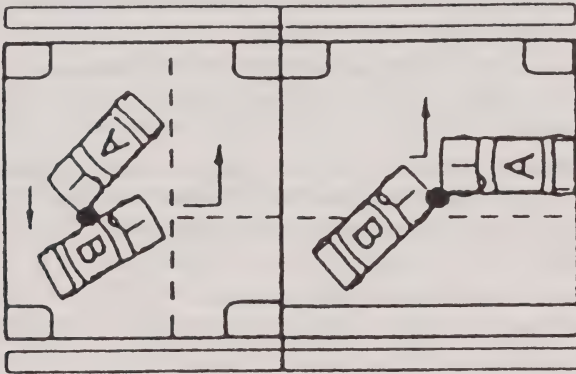
(3) If the location on the road of automobiles "A" and "B" when the incident (a "sideswipe") occurs cannot be determined, the driver of each automobile is 50 per cent at fault for the incident.



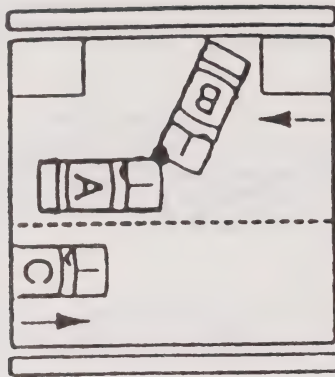
(4) If automobile "B" is over the centre line of the road when the incident occurs, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.



(5) If automobile "B" turns left into the path of automobile "A", the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.



(6) If automobile "B" is leaving a parking place or is entering the road from a private road or driveway, and if automobile "A" is overtaking to pass another automobile when the incident occurs, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.



Rules for Automobiles in an Intersection

13. (1) This section applies with respect to an incident that occurs at an intersection that does not have traffic signals or traffic signs.

(2) If automobile "A" enters the intersection before automobile "B", the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

(3) If automobiles "A" and "B" enter the intersection at the same time and automobile "A" is to the right of automobile "B" when in the intersection, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

(4) If it cannot be established whether automobile "A" or "B" entered the intersection first, the driver of each automobile shall be deemed to be 50 per cent at fault for the incident.

14. (1) This section applies with respect to an incident that occurs at an intersection with traffic signs.

(2) If the incident occurs when the driver of automobile "B" fails to obey a stop sign, yield sign or a similar sign or flares or other signals on the ground, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

(3) If the driver of each automobile fails to obey a stop sign, the driver of each automobile is 50 per cent at fault for the incident.

(4) If it cannot be established who failed to obey a stop sign, the driver of each automobile shall be deemed to be 50 per cent at fault for the incident.

(5) If, at an all-way stop intersection, automobile "A" arrives at the intersection first and stops, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

(6) If, at an all-way stop intersection, both automobiles arrive at the intersection at the same time and stop, with automobile "A" to the right of automobile "B", the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

(7) If it cannot be established who arrived at the all-way stop intersection first, the driver of each automobile shall be deemed to be 50 per cent at fault for the incident.

15. (1) This section applies with respect to an incident that occurs at an intersection with traffic signals.

(2) If the driver of automobile "B" fails to obey a traffic signal, the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

(3) If it cannot be established whether the driver of either automobile failed to obey a traffic signal, the driver of each automobile shall be deemed to be 50 per cent at fault for the incident.

(4) If the traffic signals at the intersection are inoperative, the degree of fault of the drivers shall be determined as if the intersection were an all-way stop intersection.

Rules for Automobiles in Parking Lots

16. (1) This section applies with respect to incidents in parking lots.

(2) The degree of fault of a driver involved in an incident on a thoroughfare shall be determined in accordance with this Regulation as if the thoroughfare were a road.

(3) If automobile "A" is leaving a feeder lane and fails to yield the right of way to automobile "B" on a thoroughfare, the driver of automobile "A" is 100 per cent at fault and the driver of automobile "B" is not at fault for the incident.

(4) If automobile "A" is leaving a parking space and fails to yield the right of way to automobile "B" on a feeder lane or a thoroughfare, the driver of automobile "A" is 100 per cent at fault and the driver of automobile "B" is not at fault for the incident.

(5) In this section,

"feeder lane",—"feeder lane" means a road in a parking lot other than a thoroughfare;

"thoroughfare",—"thoroughfare" means a main road for passage into, through or out of a parking lot.

Rules for Other Circumstances

17. (1) If automobile "A" is parked when it is struck by automobile "B", the driver of automobile "A" is not at fault and the driver of automobile "B" is 100 per cent at fault for the incident.

(2) If automobile "A" is illegally parked, stopped or standing when it is struck by automobile "B" and if the incident occurs outside a city, town or village, the driver of

automobile "A" is 100 per cent at fault and the driver of automobile "B" is not at fault for the incident.

18. The driver of automobile "A" is 100 per cent at fault and the driver of automobile "B" is not at fault for an incident in which automobile "A" collides with automobile "B" when the driver of automobile "A" fails to obey,

- (a) a police officer's direction;
- (b) a do not enter sign;
- (c) a prohibited passing sign; or
- (d) a prohibited turn sign.

19. The driver of automobile "A" is 100 per cent at fault and the driver of automobile "B" is not at fault for an incident that occurs,

- (a) when automobile "A" is backing up;
- (b) when automobile "A" is making a U-turn; or
- (c) when the driver of, or a passenger in, automobile "A" opens the automobile door or leaves the door open.

*Rules When a Driver
is Charged With a Driving Offence*

20. (1) For the purposes of this Regulation, a driver is considered to be charged with a driving offence,

- (a) if, as a result of the incident, the driver is charged with operating the automobile while his or her ability to operate the automobile was impaired by alcohol or a drug;
- (b) if, as a result of the incident, the driver is charged with driving while his or her blood alcohol level exceeded the limits permitted by law;
- (c) if, as a result of the incident, the driver is charged with an indictable offence related to the operation of the automobile;
- (d) if the driver, as a result of the incident, is asked to provide a breath sample and he or she is charged with failing or refusing to provide the sample;
- (e) if, as a result of the incident, the driver is charged with exceeding the speed limit by sixteen or more kilometres per hour.

(2) The degree of fault of the insured shall be determined in accordance with the ordinary rules of law, and not in accordance with these rules,

- (a) if the driver of automobile "A" involved in the incident is charged with a driving offence; and
- (b) if the driver of automobile "B" is wholly or partly at fault, as otherwise determined under these rules, for the incident.

REGULATION 669

FINANCIAL STATEMENT

R.R.O. 1990, Reg. 669; am. O. Reg. 765/92, s. 1

1. (1) The annual statement required by clause 102(1)(a) of the Act shall be delivered to the Superintendent,

- (a) on or before the last day of February, in the case of an insurer other than an insurer whose licence is restricted to contracts of reinsurance; and
- (b) on or before the 15th day of April in the case of an insurer whose licence is restricted to contracts of reinsurance.

(2) If a date specified by subsection (1) falls on a day when the office of the Superintendent is not open for business, the statement may be delivered on the next day when the office is open for business. O. Reg. 765/92, s. 1.

2. The following categories of insurers are prescribed for the purpose of clause 102(1)(b) of the Act:

- 1. Fraternal societies incorporated in Ontario.
- 2. Insurers incorporated in Ontario that are licensed for life insurance, other than insurers mentioned in paragraph 1.
- 3. Insurers incorporated in Ontario, other than mutual benefit societies and insurers mentioned in paragraph 1 or 2.
- 4. Reciprocal or inter-insurance exchanges that issue contracts from an office in Ontario.

REGULATION 670

GENERAL

R.R.O. 1990, Reg. 670

1. Sections 94 to 96 of the Act apply to the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island, and Saskatchewan.

2. Sections 67 to 71 and 94 to 99 of the Act do not apply to insurers registered under the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada), and the said insurers are required to file only such modified statements as the Superintendent prescribes.

REGULATION 671

LIFE COMPANIES SPECIAL SHARES — INVESTMENT

R.R.O. 1990, Reg. 671

Definitions

1. In this Regulation,

- “ancillary business corporation”**.—“ancillary business corporation” means a corporation incorporated to carry on any business, other than a business activity referred to in clauses 433(8)(a) to (f) of the Act, that is reasonably ancillary to the business of insurance;
- “annual statement”**.—“annual statement” means the statement required by section 102 of the Act;
- “equity share”**.—“equity share” means a share of any class of shares of a corporation to which are attached voting rights exercisable in all circumstances and a share of any class of shares to which are attached voting rights by reason of the occurrence of any contingency that has occurred and is continuing;
- “fire and casualty corporation”**.—“fire and casualty corporation” means a corporation incorporated under the laws of Canada or any province of Canada to undertake contracts of insurance other than contracts of life insurance;
- “foreign life corporation”**.—“foreign life corporation” means a corporation incorporated outside Canada to undertake contracts of life insurance;
- “life company”**.—“life company” means an insurer incorporated and licensed under the laws of Ontario to transact the business of life insurance;
- “mutual fund corporation”**.—“mutual fund corporation” means a corporation incorporated to offer public participation in an investment portfolio through the issue of one or more classes of mutual fund shares;
- “real estate corporation”**.—“real estate corporation” means a corporation incorporated to acquire, hold, maintain, improve, lease or manage real estate or leaseholds or act as agent or broker in the sale or purchase of real estate or leaseholds;
- “service corporation”**.—“service corporation” means a corporation incorporated to provide,
- (a) a life company or a foreign life corporation with advisory, management or sales distribution services in respect of life insurance contracts or annuities the reserves for which vary in amount depending on the market value of a specified group of assets maintained in a separate and distinct fund, or
 - (b) a mutual fund corporation with advisory, management or sales distribution services.

2. For the purpose of this Regulation,

- (a) a life company shall be deemed to control a corporation if the life company owns shares of the corporation carrying more than 50 per cent of the votes for the election of directors, other than by way of security only or owns, directly or indirectly, more than 50 per cent of the total number of issued and outstanding equity shares of the corporation; and
- (b) a life company and one or more other life companies shall be deemed to control a corporation if all the life companies together own shares of the corporation carrying more than 50 per cent of the votes for the election of directors, other than by way of security or own, directly or indirectly, more than 50 per cent of the total number of the issued and outstanding equity shares of the corporation.

Foreign Life Corporation Shares

3. (1) The terms and conditions under which a life company may, under clause 433 (8) (a) of the Act, invest its funds in the fully paid shares of a foreign life corporation are as follows,

- (a) subject to clause (b), the life company shall not make or hold an investment in the shares of a foreign life corporation unless it has control, or as a result of the investment will acquire control, of the corporation;
- (b) although it does not have control or would not as a result of the proposed investment acquire control of a foreign life corporation, a life company may, with the approval of the Superintendent, make or hold an investment in the shares of that corporation where,
 - (i) the life company and one or more other life companies have control, or as a result of the investment will acquire control, of a foreign life corporation, or
 - (ii) in the case of a life company that has transacted the business of insurance in the country or state in which the corporation was incorporated,
 - (A) the laws of that country or state do not permit the life company to acquire or retain control of the corporation, or
 - (B) the social or economic circumstances in that country or state or the conditions of transacting the business of insurance therein are such that, in the opinion of the Superintendent, investment is in the best interests of the policyholders of the life company;
- (c) before an investment is made in the shares of a foreign life corporation, the life company shall furnish the Superintendent with such information as he or she may require relating to the proposed investment and, where that investment is in the shares of an existing corporation, the life company shall file with the Superintendent a certified copy of the instrument of incorporation, by-laws and most recent financial statement of that corporation;

- (d) the life company shall deposit with the Superintendent within two weeks after making an investment in the shares of a foreign life corporation, an undertaking by the corporation that, while the life company holds an investment in the shares of the foreign life corporation, the corporation will,
 - (i) provide the Superintendent with copies of its financial statements and such other information concerning its financial condition and affairs as he or she may from time to time request,
 - (ii) limit its activities to the transaction of the business of life insurance, personal accident insurance and sickness insurance, together with such other activities as may be necessarily incidental to the transaction of such business,
 - (iii) not make any investment that the life company is prohibited from making by section 436 of the Act,
 - (iv) not acquire or hold shares of any corporation incorporated to undertake contracts of life insurance, and
 - (v) not acquire or hold, except with the approval of the Superintendent, more than 30 per cent of the common shares of any corporation except a real estate corporation;
- (e) the life company shall from time to time at the request of the Superintendent submit such information as the Superintendent may require as evidence that the foreign corporation is complying with the undertaking referred to under clause (d);
- (f) the life company shall not, except with the approval of the Superintendent, solicit applications for insurance in any jurisdiction where the foreign life corporation is soliciting applications for insurance;
- (g) the common shares of the foreign life corporation owned by the life company shall be taken into account in the annual statement of the life company at a value not greater than the amount obtained by multiplying,
 - (i) an amount equal to the excess of the assets of the corporation over the sum of its liabilities and its issued and paid in preferred capital shares,by,
 - (ii) the proportion that the number of common shares of the corporation owned by the life company bears to the total number of the issued and outstanding common shares of the corporation; and
- (h) where the life company has made an investment in the shares of one or more foreign life corporations the aggregate of,
 - (i) the amounts invested by the life company in the shares of the foreign life corporations,
 - (ii) the amounts advanced, lent or in any way contributed by the life company to the foreign life corporations, and

(iii) the amounts, other than the amounts referred to in subclause (ii), owing to the life company by the foreign life corporations,

shall not at any time, except with the approval of the Minister, exceed 2 per cent of the book value of the total assets of the life company.

(2) For the purposes of clause (1)(g),

(a) the assets of the foreign life corporation shall not include any asset, other than an investment or loan, that if owned by the life company would not be admitted as an asset in the annual statement of the life company;

(b) the total value of the securities included in the assets of the foreign life corporation shall not exceed the values established by the Superintendent; and

(c) the liabilities of the foreign life corporation shall be such amount, not less than the liabilities shown on its books and including the actuarial reserves for policies in force as may be certified by an actuary, to adequately provide for the financial obligations of the company.

(3) For the purposes of subclauses (1)(h)(i) and (ii), the amounts referred shall be converted to Canadian dollars at the rates of exchange in effect at the time the investment, advance, loan or contribution was made.

(4) For the purposes of subclause (1)(h)(iii), the amounts referred shall be converted to Canadian dollars at the current rate of exchange.

Fire and Casualty Corporation Shares

4. (1) The terms and conditions under which a life company may, under clause 433(8)(c) of the Act, invest its funds in the fully paid shares of a fire and casualty corporation are as follows,

(a) the life company shall not make an investment in the shares of a fire and casualty corporation unless it has control, or as a result of the investment it acquires control of the corporation;

(b) the life company shall deposit with the Superintendent within two weeks after making an investment in the shares of a fire and casualty corporation an undertaking by that corporation that, while it is controlled by the life company, the corporation will not,

(i) make an investment that the life company is prohibited from making by section 436 of the Act, or

(ii) except for a fire and casualty corporation, acquire or hold shares of any corporation incorporated to undertake contracts of insurance;

(c) the life company shall not at any time hold an investment in the shares of a fire and casualty corporation under clause 433(8)(c) of the Act unless it controls the corporation;

- (d) the common shares of the fire and casualty corporation owned by the life company shall be taken into account in the annual statement of the life company at a value not greater than the amount obtained by multiplying,
 - (i) an amount equal to the excess of the assets of the corporation over the sum of its liabilities and its issued and paid in preferred capital shares,by,
 - (ii) the proportion that the number of common shares of the corporation owned by the life company bears to the total number of the issued and outstanding common shares of the corporation; and
- (e) where the life company has made an investment in the shares of one or more fire and casualty corporations under clause 433(8)(c) of the Act, the aggregate of,
 - (i) the amounts invested by the life company in the shares of the corporations,
 - (ii) the amounts advanced, lent or in any way contributed by the life company to the corporations, and
 - (iii) the amounts, other than the amounts referred to in subclause (ii), owing to the life company by the corporations,shall not at any time, except with the approval of the Minister, exceed 2 per cent of the book value of the total assets of the life company.

(2) For the purposes of clause (1)(d), the values of the assets and the amounts of the liabilities and preferred capital shares of the fire and casualty corporation shall be those shown in its most recent annual statement, but the total value of the securities included in the assets shall not exceed the total of the market values shown for those securities in that annual statement.

Real Estate Corporation Shares

5. (1) The terms and conditions under which a life company may, under clause 433(8)(d) of the Act, invest its funds in the fully paid shares of a real estate corporation are as follows,

- (a) before an investment is made in the shares of a real estate corporation, a life company shall furnish the Superintendent with such information as he or she may require relating to the proposed investment and where that investment is in the shares of an existing corporation, the life company shall file with the Superintendent a certified copy of the instrument of incorporation, by-laws and most recent financial statement of that corporation;
- (b) the life company shall deposit with the Superintendent, within two weeks after making an investment in the shares of a real estate corporation, an undertaking by the corporation that, while the life company holds an investment in the shares of the corporation, the corporation will,

- (i) provide the Superintendent with copies of its financial statements and such other information concerning its financial condition and affairs as he or she may from time to time request and permit the Superintendent or an authorized member of his or her staff to visit its head office and other offices at any time and examine its books, vouchers, securities and documents,
 - (ii) limit its activities to acquiring, holding, maintaining, improving, leasing or managing real estate or leaseholds, or to acting as agent or broker in the sale or purchase of real estate or leaseholds,
 - (iii) not carry on, except with the approval of the Superintendent, the activities referred to in subclause (ii) in respect of an real estate or leaseholds other than real estate or leaseholds owned by or mortgaged to,
 - (A) the life company,
 - (B) the real estate corporation,
 - (C) any other real estate corporation in which the life company has made an investment under clause 433(8)(d) of the Act, or
 - (D) any other real estate corporation of which more than 30 per cent of the common shares are owned by the corporation or by a real estate corporation referred to in sub-subclause (C),
 - (iv) procure, at the request of the Superintendent and at its own expense, an appraisal by one or more competent valuers of any parcel of real estate or any leasehold owned by it,
 - (v) not make any investment that the life company is prohibited from making by section 436 of the Act,
 - (vi) restrict its investments and loans, other than,
 - (A) investments in real estate or leaseholds, and
 - (B) investments in the shares of other real estate corporations,to those it could make if it were a life company, and
 - (vii) not make or hold an investment in more than 30 per cent of the common shares of any real estate corporation unless the life company deposits with the Superintendent an undertaking by that other real estate corporation to the same effect as the undertaking referred to hereunder except that that other real estate corporation shall further undertake not to make or hold an investment in the shares of any other real estate corporation;
- (c) the life company shall from time to time at the request of the Superintendent submit such information as the Superintendent may require as evidence that the real estate corporation is complying with the undertaking referred to in clause (b) and, where applicable, that any other real estate corporation described in subclause (b) (vii) is complying with the undertaking referred to in that clause;

- (d) the common shares of the real estate corporation owned by the life company shall be taken into account in the annual statement of the life company at a value not greater than the amount obtained by multiplying,
- (i) an amount equal to the excess of the assets of the corporation over the sum of its liabilities and its issued and paid in preferred capital shares,
- by
- (ii) the proportion that the number of common shares of the corporation owned by the life company bears to the total number of the issued and outstanding common shares of the corporation;
- (e) in respect of any one parcel of real estate or any one leasehold owned by the real estate corporation or by any other real estate corporation of which more than 30 per cent of the common shares are owned by the corporation, the aggregate of the book values of,
- (i) the investments of the life company in mortgages or hypothecs, bonds, debentures or other evidences of indebtedness specifically secured by that parcel of real estate or leasehold,
 - (ii) the loans by the life company specifically secured by that parcel of real estate or leasehold, and
 - (iii) all other investments or loans that in the opinion of the Superintendent may reasonably be taken to represent an interest of the life company in that parcel of real estate or leasehold,
- shall not at any time exceed 2 per cent of the book value of the total assets of the life company;
- (f) where a life company has made an investment in the shares of a real estate corporation under clause 433(8)(d) of the Act, the aggregate of the book values of investments made by the life company in the mortgages or hypothecs, bonds, debentures or other evidences of indebtedness or shares of, or by way of loans to,
- (i) real estate corporations in the shares of which the life company has made an investment under clause 433(8)(d) of the Act, and
 - (ii) other real estate corporations described in subclause (b)(vii) of which more than 30 per cent of the common shares are owned by a real estate corporation referred to in subclause (i),
- shall not at any time exceed 10 per cent of the book value of the total assets of the life company; and
- (g) despite clause (e), the life company may make an investment in or a loan on the security of a parcel of real estate or leasehold referred to in clause (e) that causes the aggregate of the book values of the investments and loans described in subclauses (e)(i), (ii) and (iii) to exceed 2 per cent of the book value of the total assets of the life company where,

- (i) the Superintendent is satisfied that the repayment schedules relating to the mortgage loans, bonds or debentures secured by that parcel of real estate or leasehold are such that the said aggregate will be reduced to 2 per cent or less of the book value of the total assets of the life company not later than the end of the fourth calendar year following the calendar year in which that investment or loan is made, and
 - (ii) that aggregate does not exceed $2\frac{3}{4}$ per cent of the book value of the total assets of the life company.
- (2) For the purposes of clause (1)(d),
- (a) the assets of the real estate corporation shall not include any asset, other than an investment referred to in sub-subclause (1)(b)(vi)(A) or (B), that if owned by a life company would not be admitted as an asset in its annual statement; and
 - (b) the total value of any securities included in the assets of the real estate corporation shall not exceed the total of the market values of the assets of the real estate corporation.

Mutual Fund Corporation Shares

6. (1) The terms and conditions under which a life company may, under clause 433(8)(e) of the Act, invest its funds in the fully paid shares of a mutual fund corporation, the investment portfolio of which is restricted to investments and loans made and held subject to the same limitations and conditions as are applicable to investments and loans made by the life company by virtue of section 433 of the Act, other than subsection (8) thereof, are as follows,

- (a) a life company shall not make an investment in the shares of a mutual fund corporation unless the investment portfolio in which the mutual fund corporation offers participation is managed by the life company or a corporation controlled by the life company;
- (b) before an investment is made in the shares of a mutual fund corporation, the life company shall furnish the Superintendent with such information as he or she may require relating to the proposed investment and, where that investment is in the shares of an existing corporation, the life company shall file with the Superintendent a certified copy of the instrument of incorporation, by-laws and most recent financial statement of that corporation;
- (c) the life company shall deposit with the Superintendent, within two weeks after making an investment in the shares of a mutual fund corporation, an undertaking by the company or the corporation managing the investment portfolio of the mutual fund corporation that, while the life company holds an investment in the shares of the mutual fund corporation, the company or corporation managing the investment portfolio will,

- (i) provide the Superintendent with copies of the financial statements of the mutual fund corporation and such other information concerning the affairs of that corporation as the Superintendent may from time to time request, and
 - (ii) not invest the funds of the mutual fund corporation,
 - (A) in any investment that the life company is prohibited from making by section 436 of the Act, or
 - (B) in more than 10 per cent of the common shares of any corporation except with the approval of the Superintendent; and
 - (d) the life company shall from time to time at the request of the Superintendent submit such information as he or she may require as evidence that the company or corporation managing the investment portfolio is complying with the undertaking referred to in clause (c).
- (2) The terms and conditions under which a life company may, under clause 433(8)(e) of the Act, invest its funds in the fully paid shares of a mutual fund corporation other than a mutual fund corporation referred to in subsection (1) are as follows,
- (a) the terms and conditions set out in clause (1)(a), (b), (c) and (d); and
 - (b) the total market value of the investments held by a life company in the shares of a mutual fund corporation other than a mutual fund corporation referred to in subsection (1), under clause 433(8)(e) of the Act, shall not at any time exceed one-third of 1 per cent of the book value of the total assets of the life company.

Service Corporation Shares

7. (1) The terms and conditions under which a life company may, under clause 433(8)(b) or (f) of the Act, invest its funds in the fully paid shares of a service corporation are as follows,
- (a) the life company shall not make an investment in the shares of a service corporation unless it has control, or as a result of the investment will acquire control, of that corporation;
 - (b) before an investment is made in the shares of a service corporation, the life company shall furnish the Superintendent with such information as he or she may require relating to the proposed investment and, where that investment is in the shares of an existing corporation, the life company shall file with the Superintendent a certified copy of the instrument of incorporation, by-laws and most recent financial statement of that corporation;
 - (c) the life company shall deposit with the Superintendent, within two weeks after making an investment in the shares of a service corporation, an undertaking by that corporation that, while it is controlled by the life company, the corporation will,

- (i) provide the Superintendent with copies of its financial statements and such other information concerning its affairs as he or she may from time to time request,
- (ii) not make any investment that the life company is prohibited from making by section 436 of the Act,
- (iii) not acquire or hold, except with the approval of the Superintendent, more than 30 per cent of the common shares of any corporation,
- (iv) not provide any services other than services referred to in clause 433(8)(f) of the Act,
- (v) provide the services referred to in clause 433(8)(b) of the Act and such other services as may be necessarily incidental hereto only,
 - (A) to the life company and to a foreign life corporation in the shares of which the life company has made an investment, or
 - (B) with the approval of the Superintendent, to another life company or foreign life corporation for such period of time as the Superintendent may determine, and
- (vi) provide the services referred to in clause 433(8)(f) of the Act and such other services as may be necessarily incidental thereto to one or more mutual fund corporations only where,
 - (A) the investment portfolio of at least one of the mutual fund corporations is managed by a corporation controlled by the life company, or
 - (B) the life company provides evidence satisfactory to the Superintendent that a corporation controlled by the life company will, within a period of time determined by the Superintendent, assume the management of a mutual fund corporation to which the service corporation provides its services;
- (d) the life company shall from time to time at the request of the Superintendent submit such information as he or she may require as evidence that the service corporation is complying with the undertaking referred to in clause (c);
- (e) the life company shall not at any time hold an investment in the shares of a service corporation under clause 433(8)(b) or (f) of the Act unless at that time it controls the corporation;
- (f) the common shares of the service corporation owned by the life company shall be taken into account in the annual statement of the life company at a value not greater than the amount obtained by multiplying,
 - (i) an amount equal to the excess of the assets of the corporation over the sum of its liabilities and its issued and paid in preferred capital shares,by,
 - (ii) the proportion that the number of common shares of the corporation owned

by the life company bears to the total number of the issued and outstanding common shares of the corporation; and

- (g) the total book value of the investments held by a life company in the shares of service corporations under clause 433(8)(b) or (g) of the Act shall not at any time exceed one-third of 1 per cent of the book value of the total assets of the life company.

(2) For the purposes of clause (1)(f), the assets of the service corporation shall not include any asset that if owned by a life company would not be admitted as an asset in its annual statement and the total value of any securities included in the assets shall not exceed the total of their market value.

Ancillary Business Corporation Shares

8. (1) The terms and conditions under which a life company may, with the prior approval of the Minister, invest its funds in the fully paid shares of an ancillary business corporation under clause 433(8)(g) of the Act are as follows,

- (a) the life company shall not make an investment in the shares of an ancillary business corporation unless it has control, or as a result of the investment will acquire control, of that corporation;
- (b) before an investment is made in the shares of an ancillary business corporation, or before a life company makes application for the incorporation of an ancillary business corporation, the life company shall furnish the Superintendent with such information as he or she may require relating to the proposed investment and, where that investment is in the shares of an existing corporation, the life company shall file with the Superintendent a certified copy of the instrument of incorporation, by-laws and most recent financial statement of that corporation;
- (c) the life company shall deposit with the Superintendent, within two weeks after making an investment in the shares of an ancillary business corporation, an undertaking by that corporation that, while it is controlled by the life company, the corporation will,
 - (i) provide the Superintendent with copies of its financial statements and such other information concerning its affairs as he or she may from time to time request, and permit the Superintendent or an authorized representative of his or her staff to visit its head office and other offices at any time and examine its books, brochures, securities and documents,
 - (ii) not carry on any business,
 - (A) referred to in clauses 433(8)(a) to (f) of the Act, or
 - (B) that is not reasonably ancillary to the business of insurance,
 - (iii) not make any investment that the life company is prohibited from making by section 436 of the Act,

- (iv) not acquire or hold, except with the approval of the Superintendent, more than 30 per cent of the common shares of any corporation, and
- (v) where it was incorporated to provide services of a kind ordinarily required by the life company, not provide, except with the approval of the Superintendent, those services to any other person unless it also provides them to the life company;
- (d) the life company shall from time to time at the request of the Superintendent submit such information as he or she may require as evidence that the ancillary business corporation is complying with the undertaking referred to in clause (c);
- (e) a life company shall not at any time hold an investment in the shares of an ancillary business corporation under clause 433(8)(g) of the Act unless it controls the corporation at that time;
- (f) the common shares of the ancillary business corporation owned by the life company shall be taken into account in the annual statement of the life company at a value not greater than the amount obtained by multiplying,
 - (i) an amount equal to the excess of the assets of the corporation over the sum of its liabilities and its issued and paid in preferred capital shares,by,
 - (ii) the proportion that the number of common shares of the corporation owned by the life company bears to the total number of the issued and outstanding common shares of the corporation; and
- (g) the total book value of the investments held by a life company in the shares of ancillary business corporations under clause 433(8)(g) of the Act shall not at any time exceed 1 per cent of the book value of the total assets of the life company.

(2) For the purposes of clause (1)(f), the assets of the ancillary business corporation shall not include any asset that if owned by a life company would not be admitted as an asset in its annual statement and the total value of any securities included in the assets shall not exceed the total of their market values.

REGULATION 672

*STATUTORY ACCIDENT BENEFITS SCHEDULE — ACCIDENTS BEFORE JANUARY 1, 1994

R.R.O. 1990, Reg. 672;
am. O. Reg. 660/93; O. Reg. 779/93

PART I

GENERAL

Title

1. This Regulation may be cited as the *Statutory Accident Benefits Schedule — Accidents Before January 1, 1994*. O. Reg. 779/93, s. 3.

Definitions

2. In this Regulation,

“**accident**”.—“accident” means an incident in which the use or operation of an automobile causes, directly or indirectly, physical, psychological or mental injury or causes damage to any prosthesis, denture, prescription eyewear, hearing aid or other medical or dental device;

“**insured automobile**”.—“insured automobile”, in respect of a particular motor vehicle liability policy, means the described automobile and includes a newly-acquired or temporary substitute automobile, all as defined by the policy;

“**insured person**”.—“insured person”, in respect of a particular motor vehicle liability policy, means,

- (a) in respect of accidents in Ontario, an occupant of the insured automobile,
- (b) in respect of accidents outside Ontario, a person living and ordinarily present in Ontario who is an occupant of the insured automobile,
- (c) the named insured, his or her spouse and any dependant of either of them while the occupant of any other automobile,
- (d) any person who is not the occupant of an automobile or of rolling stock that runs on rails who is involved in an accident in Ontario involving the insured automobile,

* This regulation has been replaced by O. Reg. 776/93 for accidents occurring on or after January 1, 1994.

- (e) the named insured, his or her spouse and any dependant of either of them who is not the occupant of an automobile or of rolling stock that runs on rails who is involved in an accident,
- (f) the named insured, his or her spouse and any dependant of either of them who is not involved in an accident but who suffers psychological or mental injury as the result of an accident involving a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother or sister or a dependant of the named insured or of his or her spouse. O. Reg. 779/93, s. 2(1).

Interpretation

3. (1) If the insured automobile is made available for the regular use of an individual, whether or not a resident of Ontario, by a corporation, unincorporated association, partnership, sole proprietorship or other entity or is rented to an individual who is a resident of Ontario, this Regulation applies to the individual and his or her spouse and their dependants as if the individual were a named insured.

(2) For the purposes of this Regulation, a person is a dependant of another person if the person is principally dependent for financial support on the other person or the other person's spouse. O. Reg. 779/93, s. 2(1).

Duty to Provide Benefits

4. The benefits set out in this Regulation will be provided under every contract evidenced by a motor vehicle liability policy in respect of accidents occurring after section 266 of the *Insurance Act* comes into force and before January 1, 1994. O. Reg. 779/93, s. 2(1).

Application Despite Certain Provisions of Insurance Act

5. Subject to section 17, the insurer will pay the benefits under this Regulation despite section 225, subsection 233(1), section 240, subsection 265(3) and statutory condition 1(1) of section 234 of the *Insurance Act*. O. Reg. 779/93, s. 2(1).

PART II

SUPPLEMENTARY MEDICAL AND REHABILITATION BENEFITS AND CARE BENEFITS

Supplementary Medical and Rehabilitation Benefits

6. (1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident all reasonable expenses resulting from the accident within the benefit period set out in subsection (3) for,

- (a) medical, psychological, surgical, dental, hospital, chiropractic, nursing and ambulance services and the services of physiotherapists;
 - (b) prostheses, dentures, prescription eyewear, hearing aids and other medical or dental devices;
 - (c) rehabilitation, life-skills training and occupational counselling and training;
 - (d) transportation for the person to and from treatment, counselling and training sessions, including transportation for an assistant;
 - (e) home renovations to accommodate the needs of the insured person;
 - (f) other goods and services, whether medical or non-medical in nature, which the insured person requires because of the accident.
- (2) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident an allowance that is reasonable having regard to all of the circumstances for expenses actually incurred by a spouse, child, grandchild, parent, grandparent, brother or sister of the insured person in visiting the insured person during his or her treatment or recovery.
- (3) For the purposes of this section, the benefit period is the longer of the two following periods calculated from the day of the accident and ending on the anniversary of the accident:
- 1. Ten years.
 - 2. Twenty years less the age of the insured person on the day of the accident.
- (4) Subject to subsections (5) and (6), the insurer, before making a payment for an expense under subsection (1), may require the insured person to submit a statement signed by the insured person's qualified medical practitioner or psychological advisor stating that the expense is necessary for the insured person's treatment or rehabilitation.
- (5) A person qualified to practise as a chiropractor may sign a statement required under subsection (4) in respect of chiropractic services under clause (1)(a).
- (6) A person qualified to practise dentistry may sign a statement required under subsection (4) in respect of dental services and dentures under clauses (1)(a) and (b).
- (7) In case of a dispute concerning an expense described in clause (1)(a), (b) or (d), the insurer will pay the expense pending resolution of the dispute.
- (8) The maximum amount payable under this section is \$500,000 with respect to each insured person.

Care Benefits

7. (1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident, for the care, if any, required by the insured person,
- (a) the reasonable cost of a professional caregiver or the amount of gross income

reasonably lost by a person other than the insured person as a result of the accident in caring for the insured person; and

- (b) all reasonable expenses resulting from the accident in caring for the insured person after the accident.

(2) The maximum amount payable per month under this section is \$3,000 a month with respect to each insured person.

(3) The maximum amount payable under this section is \$500,000 with respect to each insured person.

Damages to Clothing, Glasses, Hearing Aids and Other Devices

8. The insurer will pay an insured person for the reasonable cost of repairing or replacing clothing worn by the insured person at the time of an accident and prostheses, dentures, prescription eyewear, hearing aids and other medical or dental devices that are lost or damaged in an accident.

Exception

9. (1) The insurer will not pay any portion of an expense referred to in subsection 6(1) or (2) or subsection 7(1) for a service that is reasonably available to the insured person under any insurance plan or law or under any other plan or law that will pay the expense.

(2) The insurer will pay benefits under this Part even though the insured person is entitled to or has received benefits under an Act administered by the Ministry of Community and Social Services for Ontario or under similar legislation in another jurisdiction.

(3) For the purpose of subsection (2), a service, benefit or entitlement provided under an Act, the administration of which was transferred from the Ministry of Community and Social Services to the Ministry of Health by Order-in-Council, shall be deemed to be provided under an Act administered by the Ministry of Community and Social Services for Ontario so long as the nature of the service, benefit or entitlement remains substantially the same as it was before the transfer. O. Reg. 660/93, s. 1.

PART III

FUNERAL EXPENSES AND DEATH BENEFITS

Funeral Expenses

10. The insurer will pay with respect to each insured person who dies as a result of an accident funeral expenses incurred up to \$3,000 if Optional Benefit 1 has not been purchased, and up to \$7,500 if it has been purchased.

Death Benefits

11. (1) If, as a result of an accident, an insured person dies within the benefit period set out in subsection (3), the insurer will pay with respect to the insured person, if Optional Benefit 1 has not been purchased,

- (a) \$25,000 to his or her spouse, if the deceased is survived by a spouse who was his or her spouse at the time of the accident;
- (b) \$25,000 to his or her dependants, if the deceased is survived by any dependant who was a dependant at the time of the accident and is not survived by a spouse who is entitled to a benefit under this section;
- (c) \$10,000 to each of his or her surviving dependants who was a dependant at the time of the accident; and
- (d) if, at the time of the accident, the deceased was a dependant, \$10,000,
 - (i) to the person upon whom the deceased was dependent or, if that person is dead, to the surviving spouse of that person if the surviving spouse was the deceased's primary caregiver, or
 - (ii) to the other surviving dependants of the person upon whom the deceased was dependent if that person and his or her spouse are dead.

(2) If, as a result of an accident, an insured person dies within the benefit period set out in subsection (3), the insurer will pay with respect to the insured person, if Optional Benefit 1 has been purchased,

- (a) \$50,000 to his or her spouse, if the deceased is survived by a spouse who was his or her spouse at the time of the accident;
- (b) \$50,000 to his or her dependants, if the deceased is survived by any dependant who was a dependant at the time of the accident and is not survived by a spouse who is entitled to a benefit under this section;
- (c) \$20,000 to each of his or her surviving dependants who was a dependant at the time of the accident; and
- (d) if, at the time of the accident, the deceased was a dependant, \$20,000,
 - (i) to the person upon whom the deceased was dependent or, if that person is dead, to the surviving spouse of that person if the surviving spouse was the deceased's primary caregiver, or
 - (ii) to the other surviving dependants of the person upon whom the deceased was dependent if that person and his or her spouse are dead.

(3) For the purposes of subsections (1) and (2), the benefit period is,

- (a) 180 days from the day of the accident unless clause (b) applies; or
- (b) 156 weeks from the day of the accident if during that period there has been continuous disability as a result of the accident.

(4) If at the time of the accident the deceased person had more than one person entitled to claim as his or her spouse, the \$25,000 payment under clause (1)(a) or \$50,000 under clause (2)(a) will be divided equally between or among such persons who survive the deceased and who as the time of the death were still spouses of the deceased.

(5) Payments under clauses (1)(b) and (d) and clauses (2)(b) and (d) will be paid in equal shares to the surviving dependants.

(6) No amount is payable under subsection (1) or (2) to a spouse or dependant unless the spouse or dependant, as the case may be, survives the deceased by thirty days.

PART IV

WEEKLY BENEFITS

Income Benefit

12. (1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident a weekly income benefit during the period in which the insured person suffers substantial inability to perform the essential tasks of his or her occupation or employment if the insured person meets the qualifications set out in subsection (2) or (3).

(2) The following qualifications apply to an insured person who claims a weekly benefit under subsection (1):

1. He or she must have been at the time of the accident,
 - i. employed or self-employed,
 - ii. on a temporary lay-off, or
 - iii. entitled to start work within one year under a legitimate offer of employment made before the accident and evidenced in writing.
2. He or she as a result of and within two years of the accident must have suffered a substantial inability to perform the essential tasks of his or her occupation or employment.

(3) A person who was unemployed and who was not self-employed at the time of the accident is qualified to receive a weekly benefit under subsection (1) if he or she was employed or self-employed for any 180 days in the twelve-month period before the accident, and if he or she as a result of and within two years of the accident has suffered a substantial inability to perform the essential tasks of the occupation or employment in which he or she spent the most time during the twelve-month period before the accident.

(4) Subject to subsection (5), the weekly benefit under subsection (1) will be the lesser of,

- (a) \$600 plus, if Optional Benefit 2 has been purchased, the amount of the benefit chosen; and

- (b) 80 per cent of the insured person's gross weekly income from his or her occupation or employment, less any payments for loss of income, except Unemployment Insurance benefits,
 - (i) received by or available to the insured person under the laws of any jurisdiction or under any income continuation benefit plan, or
 - (ii) received under any sick leave plan.
- (5) The insurer is not required to pay a weekly benefit under subsection (1),
 - (a) for the first week of the disability;
 - (b) for any period in excess of 156 weeks unless it has been established that the injury continuously prevents the insured from engaging in any occupation or employment for which he or she is reasonably suited by education, training or experience.
- (6) The insurer is not required to pay a weekly benefit under subsection (1) to a person described in subparagraph iii of paragraph 1 of subsection (2) until the day the person would have been entitled under the contract to begin employment unless before that day the person is qualified for a benefit under another paragraph of that subsection.
- (7) The following rules apply to the calculation of gross weekly income:
 - 1. A person's gross weekly income shall be deemed to be the greatest of,
 - i. his or her average gross weekly income from his or her occupation or employment for the four weeks preceding the accident,
 - ii. this or her average gross weekly income from his or her occupation or employment for the fifty-two weeks preceding the accident,
 - iii. \$232.
 - 2. When a person becomes qualified to receive an income benefit under subparagraph iii of paragraph 1 of subsection (2), the person's gross weekly income shall be deemed to be the greatest of,
 - i. if the person was qualified under either subparagraph i or ii of paragraph 1 of subsection (2), his or her gross weekly income as determined under paragraph 1,
 - ii. the gross weekly income payable under the contract of employment,
 - iii. \$232.
 - 3. Business expenses which cease as a result of the accident shall be deducted from a person's income from self-employment before calculating his or her gross weekly income.

Benefit If No Income

13. (1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident, a weekly benefit during

the period in which the insured person suffers substantial inability to perform the essential tasks in which he or she would normally engage if he or she meets the qualifications set out in subsection (2).

(2) The following qualifications apply to an insured person who claims weekly benefits under subsection (1):

1. He or she as a result of and within two years of the accident must have suffered a substantial inability to perform the essential tasks in which he or she would normally engage.
2. He or she must not be entitled to receive a benefit under section 12 at the time of the payment of a benefit under this section or, if entitled to a benefit under that section, he or she must be a primary caregiver as described in subsection (4) and have only income from self-employment from work in his or her home.
3. He or she must attain the age of sixteen years before being eligible to receive the weekly benefit.

(3) The weekly benefit under subsection (1) will be \$185 less any payments for loss of income, except Unemployment Insurance benefits,

- (a) received by or available to the insured person under the laws of any jurisdiction or under any income continuation benefit plan; or
- (b) received under any sick leave plan.

(4) The insurer will pay to an insured person who is receiving a weekly benefit under subsection (1), or who but for section 17 would be entitled to the weekly benefit, a benefit of \$50 per week if Optional Benefit 3 has not been purchased, or \$100 per week if it has been purchased, for each person who at the time of the accident was residing with the insured person and in respect of whom the insured person was the primary caregiver if the person receiving the care was less than sixteen years of age or if the person required the care because of physical or mental incapacity.

(5) The maximum amount payable under subsection (4) is \$200 per week, if Optional Benefit 3 has not been purchased, and \$400 per week if it has been purchased.

(6) A weekly benefit under subsection (4) ceases,

- (a) when the person cared for attains age sixteen, unless he or she is incapacitated;
- (b) when the incapacity of the person cared for ceases; or
- (c) when the insured person ceases to be eligible for a benefit under subsection (1) or when the insured person would cease to be eligible had he or she not been disqualified under section 17.

(7) A person cannot receive benefits under this section and section 12 at the same time.

(8) The insurer is not required to pay a weekly benefit under this section,

- (a) for the first week of the disability;

- (b) for any period in excess of 156 weeks unless it has been established that the injury continuously prevents the insured person from engaging in substantially all of the activities in which the person would normally engage.

Interim Payments

14. (1) The insurer will pay full benefits under this Part until the insured person receives payments that would reduce the insurer's obligation through the operation of subsection 12(4) or 13(3) if the insured person has applied to receive the payments.

(2) The insurer will pay benefits under this Part even though the insured person is entitled to, or has received, benefits under an Act administered by the Ministry of Community and Social Services for Ontario or under similar legislation in another jurisdiction.

Deductions

15. The insurer may deduct from any benefit payable under this Part 80 per cent of any income received or available from any occupation or employment subsequent to the accident.

Temporary Return to School or Work

16. (1) Subject to section 15 and subsection (3), a person receiving a benefit under this Part may attend school or accept, or return to, work at any time during the first two years following the accident for any period of time without affecting his or her benefits under this Part if, as a result of the accident, he or she is unable to continue at school or in the occupation or employment.

(2) Subject to section 15 and subsection (3), after the two-year period referred to in subsection (1), a person receiving a benefit under this Part may attend school or accept, or return to, an occupation or employment for periods of up to ninety days without affecting his or her benefits under this Part if he or she, as a result of the injury, is unable to continue at school or in the occupation or employment.

(3) The insurer is not required to pay weekly benefits under section 13 for any week in which the insured person attends school.

Exclusions

17. (1) The insurer is not required to pay benefits under subsection 12(1) or 13(1) in respect of a driver of an automobile at the time of the accident,

- (a) if, as a result of the accident, the driver is convicted of operating the automobile while his or her ability to operate it was impaired by alcohol or a drug, or of

driving while his or her blood alcohol level exceeded the limits permitted by law or of an indictable offence related to the operation of the automobile;

- (b) if, as a result of the accident, the driver is asked to provide a breath sample and he or she is convicted for failure to provide the sample;
 - (c) if, as a result of the accident, the driver is convicted of operating the automobile while it was not insured under a motor vehicle liability policy;
 - (d) if the driver was not authorized by law to drive the automobile;
 - (e) if the driver is an excluded driver under the contract of automobile insurance; or
 - (f) if the driver knew or ought reasonably to have known that he or she was operating the automobile without the owner's consent.
- (2) Clause (1)(d) does not apply to a driver who is not authorized by law to drive an automobile only by reason of a suspension of a licence for failure to pay a fine.
- (3) The insurer is not required to pay benefits under subsection 12(1) or 13(1),
- (a) in respect of any person who has made, or who knows of, a material misrepresentation which induced the insurer to enter into the contract of automobile insurance or who intentionally failed to notify the insurer of a change in the risk material to the contract; or
 - (b) in respect of an occupant of an automobile at the time of the accident who knew or ought reasonably to have known that the driver was operating the automobile without the owner's consent.
- (4) Clause (3)(b) does not prevent an excluded driver or any other occupant of an automobile driven by the excluded driver from recovering statutory accident benefits under a motor vehicle liability policy in respect of which the excluded driver or other occupant is a named insured. O. Reg. 779/93, s. 2(2).

PART V

ACCIDENTS IN QUEBEC

Benefits

18. (1) The insurer will pay with respect to a person insured in Quebec who dies or who sustains physical, psychological or mental injury as a result of an accident in Quebec or who incurs a cost described in section 6, as the person may elect,

- (a) benefits as provided in Part II (Supplementary Medical and Rehabilitation Benefits and Care Benefits), Part III (Funeral Expenses and Death Benefits) and Part IV (Weekly Benefits); or
- (b) benefits in the same amounts and subject to the same conditions as if the person

was a resident of Quebec (as defined in the *Automobile Insurance Act* (Quebec) and the regulations made under that Act) and was entitled to payments under that Act and those regulations.

(2) A person who elects to claim a benefit as provided in clause (1)(a) is thereafter eligible only for benefits under Parts II, III and IV.

(3) A person who elects to claim a benefit as provided in clause (1)(b) is thereafter ineligible for benefits under Parts II, III and IV.

(4) For the purposes of this Part, a person is insured in Quebec if the person at the time of the accident,

- (a) was authorized by law to be or to remain in Canada and was living and ordinarily present in Ontario;
- (b) met the criteria prescribed for recovery under the *Automobile Insurance Act* (Quebec);
- (c) was not the owner or driver of, or an occupant of, an automobile registered in Quebec; and
- (d) was,
 - (i) an occupant of the insured automobile,
 - (ii) the named insured, his or her spouse or a dependant of either of them while the occupant of any other automobile,
 - (iii) a person who was not the occupant of an automobile and was struck by the insured automobile,
 - (iv) the named insured, his or her spouse or a dependant of either of them and was struck by any other automobile,
 - (v) if the named insured is a corporation, unincorporated association, partnership or sole proprietorship, a person for whose regular use the insured automobile was supplied, his or her spouse or a dependant of either of them who was injured,
 - (A) while the occupant of any other automobile, or
 - (B) by any other automobile while not the occupant of the automobile, or
 - (vi) a person struck by an automobile that was driven by a person described in subclause (i), (ii) or (v).

PART VI

OPTIONAL BENEFITS

Options

19. (1) Every insurer shall offer the following optional benefits:

1. Optional Benefit 1: Increased Funeral Expenses and Death Benefits

If this option is purchased,

- (a) the maximum amount payable under section 10 (Funeral Expenses) will be \$7,500; and
- (b) the maximum amount payable under section 11 (Death Benefits) will be the amounts set out in subsection 11(2).

2. Optional Benefit 2: Increased Weekly Income Benefit

If this option is purchased, the amount referred to in clause 12(4)(a) will be increased by such amount from the following as may be chosen when purchasing the option:

- 1. \$150.
- 2. \$300.
- 3. \$450.

3. Optional Benefit 3: Increased Primary Caregiver Benefit

If this option is purchased, the amount payable under subsection 13(4) will be \$100 per week per person.

(2) Optional benefits may be purchased at any time before an accident in respect of which a claim is made.

PART VII

WORKERS' COMPENSATION

Effect of Workers' Compensation Benefits

20. The insurer will not pay benefits under this Regulation in respect of any insured person who, as a result of an accident, is entitled to receive benefits under any workers' compensation law or plan. O. Reg. 779/93, s. 2(1).

Interim Payments

21. (1) Despite section 20, the insurer will pay full benefits under this Regulation to a person described in that section until the resolution of any action brought by the person in any court to recover for personal injuries resulting from the accident under which the workers' compensation claim arose or until the person receives payments under a workers' compensation law or plan if,

- (a) the person makes an assignment to the insurer of any benefits under any workers'

compensation law or plan to which he or she is or may become entitled as a result of the accident; and

- (b) the administrator or board responsible for the administration of the workers' compensation law or plan approves the assignment.

(2) The amount of statutory accident benefits recoverable by the insurer under the assignment in subsection (1) shall be determined in accordance with the following formula:

$$A = T - C$$

Where,

A = amount recoverable;

T = total compensation for personal injury received by the insured person under all contracts of automobile insurance excluding any amount received as a special award under subsection 282(10) or 283(7) of the *Insurance Act* and any amount received as interest;

C = compensation for personal injury the insured person would have recovered under all contracts of automobile insurance had the statutory accident benefits not been paid. O. Reg. 779/93, s. 2(1).

PART VIII

MISCELLANEOUS

Notice, Application for Benefits

22. (1) The insured person or the person otherwise entitled to make a claim shall,

- (a) give initial notice of a claim to the insurer, in writing, within thirty days from the date of the accident or as soon as practicable thereafter; and
- (b) furnish to the insurer within ninety days of the giving of the notice under clause (a) a completed application for statutory accident benefits respecting the accident and the resulting loss.

(2) A failure to comply with a time limit set out in subsection (1) does not invalidate a claim if the claimant has a reasonable excuse and so long as there is compliance within two years of the accident. O. Reg. 779/93, s. 2(2).

Certificates, Examinations

23. (1) Unless waived by the insurer, the insured person or the person otherwise entitled to make a claim under Part IV shall furnish a certificate from a qualified medical

practitioner or psychological advisor of the insured person's choice as to the cause and nature of the injury for which the claim is made, an estimate of the duration of the disability caused by the accident and a treatment plan.

(2) In respect of claims under Part IV, the insurer may, on reasonable notice, require an examination of the insured person by a qualified medical practitioner, psychological advisor or chiropractor as often as it reasonably requires, and require an autopsy of a deceased insured person in accordance with the law relating to autopsies.

(3) The insurer will pay the reasonable cost of examinations under subsection (1) if the cost is not payable under any insurance plan or law or under any other plan or law.

(4) The insurer will pay the cost of all certificates under subsection (1) and for all examinations and certificates under subsection (2).

Payment of Claims, Refusal to Pay

24. (1) Amounts payable under Parts II, III and V are overdue if not mailed or otherwise delivered by the insurer within thirty days after it has received a completed application for statutory accident benefits.

(2) Amounts payable under Part IV are overdue if not mailed or otherwise delivered by the insurer within ten days after it has received a completed application for statutory accident benefits or if the insurer fails to make a payment required by subsection (3).

(3) Payments under Parts IV and V shall be mailed or otherwise delivered at least once every second week while the insurer remains liable to the insured person.

(4) The insurer will pay interest on overdue payments from the date they become overdue at the rate of 2 per cent per month.

(5) Subsection (3) does not apply if the insurer prepaays benefits owing.

(6) Despite subsections (1), (2) and (3), a payment is not overdue if, at the time it would have become payable, the certificate required by subsection 23(1) has not been received by the insurer, six weeks have passed since the insurer received the completed application for statutory accident benefits and the insurer has not waived the requirement that the certificate be supplied.

(7) If subsection (6) applies, the payment becomes overdue if the amount payable is not mailed or otherwise delivered by the insurer within ten days after the insurer has received the certificate.

(8) If the insurer refuses to pay an amount claimed in an application for statutory accident benefits, the insurer shall forthwith give written notice to the insured person giving the reasons for the refusal. O. Reg. 779/93, s. 2(2).

Restriction on Proceedings

25. No person may commence a mediation proceeding under section 280 of the *Insurance Act* in respect of benefits under this Regulation unless the requirements of

section 22 have been satisfied and the insured person has made himself or herself reasonably available for any examination required under section 23. O. Reg. 779/93, s. 2(1).

Time Limit for Proceedings

26. A mediation proceeding under section 280 of the *Insurance Act* or an arbitration or court proceeding under section 281 of the Act in respect of benefits under this Regulation must be commenced within two years from the insurer's refusal to pay the amount claimed in the application for statutory accident benefits or, if the person has attended school or accepted, or returned to, an occupation or employment, as permitted by section 16, within two years of the insurer's refusal to pay further benefits.

(2) Despite subsection (1), an arbitration or court proceeding under section 281 of the *Insurance Act* may be commenced within ninety days after the mediator reports to the parties under subsection 280(8) of the Act. O. Reg. 779/93, ss. 2, 5, 5(1).

Repayments to Insurer

27. (1) A person must repay to the insurer any benefit received under this Schedule that is paid to the person through error or fraud.

(2) A person must repay to the insurer any benefit received under sections 12 and 13 that is paid to him or her if the person or the person in respect of whom the payment was made was disqualified from payment under section 17.

(3) A person must repay to the insurer any benefit received under sections 12 and 13 to the extent of any payments received by the person that are deductible from benefits under subsection 12(4) or 13(3).

(4) The insurer may charge interest from the day the amount owing to the insurer under this section is determined at the bank rate on that day.

(5) In subsection (4), "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule 1 to the *Bank Act* (Canada).

Copies of Regulation

28. The insurer, at a named insured person's request, will provide a copy of this Schedule to the person without charge. O. Reg. 779/93, s. 6.

Forms

29. (1) An initial application for benefits under Part II, IV or V shall be in Form 1 and an application for additional benefits shall be in Form 2.

(2) An application for benefits under Part III shall be in Form 3.

(3) A certificate required by subsection 23(1) shall be in Form 4.

Form 1

Insurance Act

Statutory Accident Benefits Schedule

Insurer Identification (Name and Address)	Ontario Automobile Insurance Application for Accident Benefits	
	Insurer No.	Claim No.
Name of Policy Holder	Policy No. Claiming Under	

Instructions

- This form is to be completed by or on behalf of any person injured and claiming no-fault accident benefits as a result of an automobile accident.
- This form must be sent to the insurance company you are claiming against.
- Be sure to include the name of the person whose policy you are claiming under and their policy number, particularly if it is not your own policy.
- In answering the questions about your employment, be sure to include both your income for the last four weeks and for the last 52 weeks since your entitlement is based on the better of each of these.

1 Identity of Claimant - To be completed by person injured in automobile accident									
<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Mid Init.	Date of Birth	Year	Month	Day		
Street Address					P.O. Box or Rural Route				

City/Town/Village	Province or State	Country	Postal / Zip Code
Area Code - Home Telephone No.	Area Code - Work Telephone No.	Language Preferred	English French Other (specify)
What is the best way to reach you? <input type="checkbox"/> by telephone <input type="checkbox"/> at home <input type="checkbox"/> by personal visit <input type="checkbox"/> at work <input type="checkbox"/> other (specify) <input type="checkbox"/> other place (specify)		between the hours of a.m. and p.m.	Days Available

2 Claimant's Representative				To be completed only if the applicant is deceased, a minor or unable to file an application on his or her own or has retained a representative					
Representing the Claimant as									
<input type="checkbox"/> Parent		<input type="checkbox"/> Guardian		<input type="checkbox"/> Lawyer		<input type="checkbox"/> Executor, Administrator or Trustee		<input type="checkbox"/> Other - specify	
<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Mid Init.	Area Code	Work Telephone No.				
Name of Firm/Organization					Area Code Fax No.				
Street Address					P.O. Box or Rural Route			Representative's File Reference	
City/Town/Village		Province or State		Country		Postal / Zip Code			

3 Details of Accident											
Date of Accident	Year	Month	Day	Time of Accident	<input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	The Claimant was <input type="checkbox"/> A Driver <input type="checkbox"/> A Passenger <input type="checkbox"/> Other		Specify			
To your knowledge did a Police Officer investigate accident? <input type="checkbox"/> Yes <input type="checkbox"/> No				If yes, Name of Police Force, Detachment or Division						Officer Name Badge No.	
Did the accident occur while you were in the course of your employment? <input type="checkbox"/> Yes <input type="checkbox"/> No				Was a claim filed with the Workers' Compensation Board or an agency outside Ontario responsible for compensating victims of work related accidents? <input type="checkbox"/> Yes <input type="checkbox"/> No							
Precise Location of Accident - Highway No., Name of Street/Road					Near the Intersection of						
City/Town/Village		Province or State		Country							
Brief Description of Accident											

4 Insurance Details or Automobile Information

Were you insured under any automobile insurance policy on the date of the accident?

☐ Yes (Complete the next two lines below and then go on to Section 5)

Automobile	License Plate No	Insurer	Policy No
1			
2			

☐ No - Complete vehicle information below.

You were ☐ Driver ☐ Passenger ☐ Pedestrian ☐ Other (Specify)

You are claiming against:

☐ your own policy (see above)

☐ the vehicle in which you were a passenger (fill in below)

☐ the vehicle that hit you (fill in below)

☐ another vehicle (fill in below)

☐ an unidentified or uninsured vehicle

<input type="checkbox"/> Mr. Automobile Owner - Last Name	First Name	Middle Initial	Area Code - Home Telephone No
<input type="checkbox"/> Mrs.			
<input type="checkbox"/> Ms.			
Street Address - P O Box or Rural Route	Appt	Area Code - Work Telephone No	

City, Town, Village	Province or State	Country	Postal/Zip Code
---------------------	-------------------	---------	-----------------

Insurer	Policy Number
---------	---------------

Automobile Description - Make	Model	Model Year	License Plate No	Province/State
-------------------------------	-------	------------	------------------	----------------

Automobile Type ☐ Passenger Automobile ☐ Motorcycle ☐ Motorized Snow Vehicle ☐ Off Road Vehicle ☐ Truck ☐ Van or Limousine ☐ Bus ☐ Other (Specify)

Did you report this accident to any other insurer?

☐ Yes ☐ No If Yes, give details

5 Claimant's Medical Condition as a Result of Accident

Did you receive medical attention following the accident? ☐ Yes ☐ No

If Yes, Facility where you were treated

Street Address

City, Town, Village	Province or State	Country	Postal/Zip Code
---------------------	-------------------	---------	-----------------

Treating Physician - Last Name	First Name
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Street Address - P O Box, or Rural Route

City, Town, Village	Province or State	Country	Postal/Zip Code
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Nature and Extent of Injuries Sustained as a Result of Accident

If you were Employed at Time of Accident - Do injuries sustained prevent you from performing the essential tasks of your employment? Explain

If you were Not Employed at Time of Accident - Do you suffer a substantial inability to perform the essential tasks in which you would normally engage? Explain

Were you unable to continue your work/studies/normal activities as a result of the accident?	If yes, from what date?	Have you returned to work/studies/normal activities?	If yes, date when	If Claimant died as a result of accident	Time of Death	
<input type="checkbox"/> Yes <input type="checkbox"/> No	Year Month Day	<input type="checkbox"/> Yes <input type="checkbox"/> No	Year Month Day	Year Month Day	Year Month Day Hour	<input type="checkbox"/> A M <input type="checkbox"/> P M

Form 1

REGULATIONS UNDER THE INSURANCE ACT

6 Claimant's Employment

At the time of the accident you were:

- ☐ Employed ☐ On a Temporary Lay-Off ☐ Unemployed ☐ Full Time Student
☐ Self-Employed ☐ Was Entitled to Start Work within 1 Year ☐ Unpaid Home-maker ☐ Retired

If unemployed, have you worked 180 days out of the last 12 months?

If Yes, complete the employment section

Most Recent Employer

Name or Business Name Contact Person Area Code - Work Telephone No

Street Address P.O. Box or Rural Route Area Code Fax Number

City, Town, Village Province or State Country Postal/Zip Code

Type of Employment ☐ Full Time ☐ Casual ☐ Self-Employed ☐ Other (specify) Occupation

☐ Part Time ☐ Seasonal

Brief Job Description (Essential Tasks)

Description of Physical Tasks

Income from Employment

How are you paid? ☐ Weekly ☐ Bi-weekly ☐ Monthly ☐ Other (specify)

	Gross Weekly Income Last 4 Weeks Preceding Accident				Gross Income for 52 Weeks Preceding Accident	
	Week 1	Week 2	Week 3	Week 4	No. of Weeks Worked	Gross Income
Salary						
Tips, Commissions						
Other Monetary Compensation						
Total						

Other Employer (if any)

Name or Business Name Contact Person Area Code - Work Telephone No

Street Address P.O. Box or Rural Route Area Code - Fax Number

City, Town, Village Province or State Country Postal/Zip Code

Type of Employment ☐ Full Time ☐ Casual ☐ Self ☐ Other (specify) Occupation

☐ Part Time ☐ Seasonal ☐ Employed

Brief Job Description (Essential Tasks)

Description of Physical Tasks

Income from Employment

How are you paid? ☐ Weekly ☐ Bi-weekly ☐ Monthly ☐ Other (specify)

	Gross Weekly Income Last 4 Weeks Preceding Accident				Gross Income for 52 Weeks Preceding Accident	
	Week 1	Week 2	Week 3	Week 4	No. of Weeks Worked	Gross Income
Salary						
Tips, Commissions						
Other Monetary Compensation						
Total						

Are you insured under any other sick leave plan or income continuation benefit plan?

☐ Yes ☐ No If yes, please explain

7 Declaration

An application for accident benefits must be signed by the claimant or the claimant's representative where the claimant is a minor or is unable to sign. I certify in good faith that the information provided is true.

Signature of Claimant or Representative Name of Person Signing (Please Print) Date

AB 3 May 14

Form 2

Insurance Act

Statutory Accident Benefits Schedule

Insurer Identification (Name and Address)	Ontario Automobile Insurance Application for Additional Accident Benefits					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">Insurer No.</td> <td style="width: 50%; padding: 2px;">Claim No.</td> </tr> </table>	Insurer No.	Claim No.			
Insurer No.	Claim No.					
Name of Policy Holder	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; padding: 2px;">Date of Accident</td> <td style="width: 10%; padding: 2px;">Year</td> <td style="width: 10%; padding: 2px;">Month</td> <td style="width: 10%; padding: 2px;">Day</td> <td style="width: 55%; padding: 2px;">Policy No. Claiming Under</td> </tr> </table>	Date of Accident	Year	Month	Day	Policy No. Claiming Under
Date of Accident	Year	Month	Day	Policy No. Claiming Under		

Instructions

- This form should be used to claim expenses related to the injury and not covered under any law or any other insurance plan. Such expenses include medication, rehabilitation, medical expenses not covered by the Health Insurance System, personal care and child care.
- It should be sent to the same insurer to which you sent the application for accident benefits.
- This claim form may be submitted as often as necessary, as expenses arise. Originals of receipts should be attached if available. If not, an explanation should be attached. Keep copies for your own records.

1 Identity of Claimant - To be completed by person injured in automobile accident or their representative									
Mr. Mrs. Ms.	Last Name	First Name	Mid Init.	Date of Birth	Year	Month	Day		Apri
Street Address P.O. Box or Rural Route									
City/Town/Village			Province or State			Country		Postal/Zip Code	

2 Claimant's Expenses - Attach original receipts			
Item	Date	Description of Service and Name of Service Provider	Amount
Total Amount			\$

LAB May 16

3 Claimant's Dependents - To be completed when requesting Primary Caregiver Benefits				
Are you the primary caregiver of a child under 16 or a person dependant on you because of physical or mental incapacity?				
<input type="checkbox"/> Yes <input type="checkbox"/> No				
If yes, list dependants who reside with you.				
Name	Date of Birth	Name	Date of Birth	Day
	Year Month Day		Year Month Day	

4 Declaration by Claimant		
A supplementary application for accident benefits must be signed by the claimant or the claimant's representative where he or she is unable to sign. I certify in good faith that the information provided is true.		
Signature of Claimant or Representative	Name of Person Signing (Please Print)	Date

SAB May 17

REGULATIONS UNDER THE INSURANCE ACT

Insurance Act

Statutory Accident Benefits Schedule

Insurer Identification (Name and Address)	Ontario Automobile Insurance Death and Funeral Payment Request			
	Insurer No	Claim No		
Name of Policy Holder	Date of Accident	Year	Month	Day
				Policy No. Claiming Under

- This form should be completed by or on behalf of the deceased's spouse or dependants. If more than one person is claiming benefits, as spouse or dependant, they should claim together, but may claim separately if necessary.

1 Identity of Deceased																					
Mr Mrs Ms		Last Name				First Name		Mid Init		Date of Birth		Year	Month	Day							
Street Address P O Box or Rural Route																					
City Town Village						Province or State				Country			Postal / Zip Code								
Date and Time of Death						Marital Status of Deceased															
Year		Month		Day		Hour		<input type="checkbox"/> A M <input type="checkbox"/> P M		<input type="checkbox"/> Married		<input type="checkbox"/> Single		<input type="checkbox"/> Separated		<input type="checkbox"/> Divorced		<input type="checkbox"/> Common-law		<input type="checkbox"/> Widow(er)	
2 Identity of Person Making Claim																					
Making Claim as																					
<input type="checkbox"/> Spouse		<input type="checkbox"/> Parent		<input type="checkbox"/> Guardian		<input type="checkbox"/> Dependent		<input type="checkbox"/> Lawyer		<input type="checkbox"/> Executor Administrator or Trustee		<input type="checkbox"/> Other - specify									
Mr Mrs Ms		Last Name				First Name		Mid Init		Area Code - Telephone No											
Name of Firm/Organization (if applicable)										Area Code - Fax No											
Street Address P O Box or Rural Route										Fax Reference (if applicable)											
City Town Village						Province or State				Country			Postal / Zip Code								
3 Payment Requested																					

☐ Funeral (complete section 4) ☐ Dependants (complete section 5)

☐ Other (specify and complete section 4) _____

4 Details of Expenses - Attach original receipts			
Item	Date	Description of Service and Name of Service Provider	Amount
Total Amount			\$

5 Deceased's Dependents									
<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss	Last Name		First Name		Mid Init	Date of Birth	Year	Month	Day
Street Address P.O. Box or Rural Route Apt									
City, Town, Village			Province or State		Country		Postal / Zip Code		
Area Code - Home Telephone No		Area Code - Work Telephone No		Language Preferred		<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other (specify)			
Relationship to Deceased									

<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss	Last Name		First Name		Mid Init	Date of Birth	Year	Month	Day
Street Address P.O. Box or Rural Route Apt									
City, Town, Village			Province or State		Country		Postal / Zip Code		
Area Code - Home Telephone No		Area Code - Work Telephone No		Language Preferred		<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other (specify)			
Relationship to Deceased									

<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss	Last Name		First Name		Mid Init	Date of Birth	Year	Month	Day
Street Address P.O. Box or Rural Route Apt									
City, Town, Village			Province or State		Country		Postal / Zip Code		
Area Code - Home Telephone No		Area Code - Work Telephone No		Language Preferred		<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other (specify)			
Relationship to Deceased									

Is there any other person who may be entitled to make a claim for these benefits?

☐ Yes ☐ No If Yes, please specify _____

6 Declaration		
I certify in good faith that the information provided is true		
Signature	Name of Person Signing (Please Print)	Date

Form 4

Insurance Act

Statutory Accident Benefits Schedule

Insurer Identification (Name and Address)				Ontario Automobile Insurance Medical or Psychological Report			
Name of Policy Holder				Insurer No		Claim No	
Date of Accident Year Month Day				Date of First Visit Year Month Day		Policy No. Claiming Under	

Instructions

- This form must be completed and forwarded to the insurer within six weeks of your application for accident benefits, unless your insurer informs you that it is not needed
- In the spaces provided above these instructions the claimant should fill in the name of the policy holder, policy number and date information. The claimant should also complete section 1
- The rest of the form should be completed and signed by your physician or psychologist

1 Identity of Claimant							
<input type="checkbox"/> Mr. Last Name		First Name		Mid init		Date of Birth Year Month Day	
<input type="checkbox"/> Mrs. Last Name		Area Code - Home Telephone No		Area Code - Work Telephone No		Appt	
Street Address P.O. Box or Rural Route							
City/Town/Village		Province or State		Country		Postal / Zip Code	
Brief Description of Accident							

2 Treating Practitioner							
Last Name		First Name		Mid init		Area Code - Work Telephone No	
Street Address P.O. Box or Rural Route		Area Code - Fax No		Area Code - Home Telephone No		Appt	
City/Town/Village		Province or State		Country		Postal / Zip Code	
Specialty							
<input type="checkbox"/> Family Physician		<input type="checkbox"/> Other Physician (specify)		<input type="checkbox"/> Psychologist		<input type="checkbox"/> Other (specify)	

3 Examination/Objective Findings							
Date you most recently examined this patient Year Month Day		Physical and Mental Findings and Limitations (for medical use)					
Other Limitations (psychological/psychiatric)							
When did symptoms first appear?							
Have you treated this patient for the same or similar condition prior to the accident (including pre-existing conditions which may be exacerbated by the current injury)?							
If yes, state when and describe briefly							

4 Investigations/Test Results

(Include Dates)

5 Diagnosis or Classification

Primary

Secondary

6 Treatment Plan

	Yes	No	Description
Investigations	<input type="checkbox"/>	<input type="checkbox"/>	Description
Medications	<input type="checkbox"/>	<input type="checkbox"/>	Description
Physiotherapy	<input type="checkbox"/>	<input type="checkbox"/>	Description
Consultation	<input type="checkbox"/>	<input type="checkbox"/>	Description
Other			

Plan of Return Visits

☐ No further visits planned ☐ Further visits planned to

Year Month Day

7 Duration of Disability

What, after discussion, is the estimate of when the client will be able to return to work or normal activities?

8 Signature of Physician or Psychologist

Signature

Date

The fee for completion of this form is not a health care benefit of the Ontario Ministry of Health. That fee, and the cost of any examinations not covered by the Health Insurance System, should be billed to the automobile insurer to whom this form is submitted.

Submission of a completed and signed form to the insurer constitutes a request for payment for its completion. No other invoice will be submitted.

PR 7 May 16

Canadian Automobile Insurance Plans — compulsory minimum insurance coverage for private passenger vehicles

Nfld./NS/NB/PEI	Quebec ^{1,6}	Ontario ^{1,4,7}	Manitoba ^{1,3}	Saskatchewan ³	Alberta/Yukon	British Columbia	NW Territories
Compulsory minimum third-party liability (bodily injury/property-damage priority)⁵							
\$200,000/\$10,000 [Nfld/NB \$20,000]	\$50,000/\$50,000	\$200,000/\$10,000	\$200,000/\$20,000	\$200,000/\$10,000	\$200,000/\$20,000	\$200,000/\$10,000	\$200,000/\$10,000
Medical payments							
\$25,000/person, including rehabilitation, excluding government health insurance plans; time limit 4 years	No time or amount limit; includes rehabilitation	\$1,000,000/person, including rehabilitation, excluding government health insurance plans	\$100,000 person, including rehabilitation, excluding compulsory health insurance	\$10,000/person discretionary to meet expenses	\$5,000/person, rehab included, amounts from government medical and hospital plans excluded; Alberta - chiropractors \$500/person per occurrence; time limit 2 years	\$150,000/person, rehab included, excludes amounts payable under surgical, dental, hospital plan or other insurer	\$25,000/person, excluding government medical and hospital plans; time limit 4 years
Maximum funeral expense benefits							
\$1,000	\$3,144	\$6,000	\$2,500	None	\$1,000	\$2,000	\$1,000

Nfld. ² /NS/NB/PEI	Quebec ^{1,6}	Ontario ^{1,4,7}	Manitoba ^{1,3}	Saskatchewan ³	Alberta ¹ /Yukon	British Columbia	NW Territories
Disability income benefits							
\$185/week outside labour force; 104 weeks partial disability; life-time if totally disabled; maximum \$140/week; 104 weeks temporary; permanent; 7-day wait; unpaid housekeeper \$70/week; maximum 12 weeks	90% of net wages; maximum income gross \$42,000/year; temporary 3 years; permanent life-time; 7-day wait; indexed	90% of net wages; \$1000/week maximum; \$185/week minimum (including those not employed); 104 weeks maximum, then loss-of-earning-capacity benefit may be payable	\$175/week or 70% gross wages; maximum \$350/week; 7-day wait; homemaker \$175/week total disability; 75/week partial; maximum 104 weeks partial disability	\$150/week lifetime total disability; 104 weeks partial @ \$75; 7-day wait; housewife \$150/week total disability; 75/week partial; maximum 104 weeks	80% gross wages; maximum \$150/week; (Yukon minimum \$40/week); 104 weeks temporary or total disability; 7-day wait; unpaid housewife \$50/week; maximum 26 weeks	75% gross wages; maximum \$300/week; 104 weeks temporary disability; lifetime total and permanent; 7-day wait; homemaker up to \$145/week; 104 weeks maximum	80% gross wages; maximum \$140/week; 104 weeks temporary disability; 7-day wait; unpaid housekeeper \$100/week; maximum 12 weeks
Death benefits							
Death within 2 years; head of household \$10,000 plus \$1,000 each for all dependents beyond first; spouse \$10,000; dependent child \$2,000	Death anytime; depends on wage and age; minimum \$41,920; maximum \$209,600 plus \$19,912 to \$36,680 to dependents according to age; if no dependents — \$15,720 to parents	Death within 3 years; \$50,000-\$200,000 for spouse or, if no spouse, dependents; \$10,000 to surviving dependent or for loss of dependent	Death anytime; \$10,000 to primary dependent and \$2,000 to each secondary dependent; dependent spouse \$10,000; dependent child \$2,000	Death within 2 years; \$10,000 to primary dependents and \$1,500 to each secondary dependent; spouse surviving dependents; \$2,500; equal division dependent child \$2,500	Death anytime; head of household \$5,000 plus \$1,000 each dependent after first and 1% of total principal sum for 104 weeks; no limit; spouse \$5,000; dependent child according to age — maximum \$1,500	Death anytime; head of household \$5,000 and \$145/week for 104 weeks to first survivor plus \$1,000 and \$35/week for 104 weeks for each survivor after first; no limit; spouse \$2,500; dependent child according to age — maximum \$1,500	Death within 2 years; head of household \$10,000; spouse \$10,000; each survivor after first \$2,500; one survivor — spouse or dependent — principal sum increased by \$1,500
Dismemberment benefits							
Part of other recovery	Scheduled up to \$100,000	None	Impairment occurring within 90 days, up to \$20,000	Scheduled benefits, maximum \$10,000	Part of other recovery	Part of other recovery	Part of other recovery

Nfld. ² /NS/NB/PEI	Quebec ^{1,6}	Ontario ^{1,4,7}	Manitoba ^{1,3}	Saskatchewan ³	Alberta/Yukon	British Columbia	NW Territories
Administration							
Private Insurers	Bodily injury — government, property damage — private insurers	Private insurers	Government (gov't and private insurers, complete for optional and excess coverage)	Government (gov't and private insurers, complete for optional and excess coverage)	Private insurers	Government (gov't and private insurers, complete for optional and excess coverage)	Private insurers

Notes:

- [1] Residents of Alberta, Manitoba and Ontario involved in accidents in Quebec receive from their own insurer the equivalent to the benefits available to Quebec residents from the government of Quebec.
- [2] Accident benefits coverage is compulsory except in Newfoundland; all policies issued or renewed after July 1993 and containing voluntary accident benefits are subject to improved limits shown.
- [3] Collision insurance is optional except in Manitoba (\$350 deductible for all-perils claims) and Saskatchewan (\$500 deductible).
- [4] Accident benefits in addition to those shown are included in Ontario policy.
- [5] Minimum limits are "inclusive", that is, the amount shown is available for any one accident; should the claim reach these limits, and both bodily injury and property damage are involved, payments for property damage would not exceed the "priority" amount shown.
- [6] Quebec laws provide that people injured in accidents in Quebec be compensated by a government fund; benefits paid to non-residents are scaled according to the injured person's degree of fault; liability limits shown for Quebec relate to property damage claims within Quebec and to personal injury and property damage claims outside Quebec.
- [7] In Ontario there are limited rights of recovery for permanent, serious and physical injury and death.

CONCORDANCE

Statutory Accident Benefits Schedule to Schedule C

(Note : Concording sections cited are not verbatim and may constitute a topical relationship at best.)

STATUTORY ACCIDENT BENEFITS SCHEDULE (R.R.O. 1990, Reg. 672; am. 660/93; 779/93)	SCHEDULE C (repealed)
<p>PART I – GENERAL</p> <p>Title</p> <p>s. 1</p> <p>Definitions</p> <p>s. 2 [accident]</p> <p>s. 2 [insured automobile]</p> <p>s. 2 [insured person]</p> <p>Interpretation</p> <p>s. 3(1) [named insured]</p> <p>s. 3(2) [dependant defined]</p> <p>Duty to Provide Benefits</p> <p>s. 4 [re. s. 266 of the Act]</p> <p>Application Despite Certain Provisions of <i>Insurance Act</i></p> <p>s. 5</p> <p>PART II – SUPPLEMENTARY MEDICAL AND REHABILITATION BENEFITS AND CARE BENEFITS</p> <p>Supplementary Medical and Rehabilitation Benefits</p> <p>s. 6(1) [expenses/services covered]</p> <p>s. 6(2) [visitation expenses]</p> <p>s. 6(3) [benefit period]</p> <p>s. 6(4) [signed statement from medical practitioner]</p> <p>s. 6(5) [chiropractic services]</p> <p>s. 6(6) [dental services]</p> <p>s. 6(7) [payment pending dispute resolution]</p> <p>s. 6(8) [maximum aggregate benefit amount]</p> <p>Care Benefits</p> <p>s. 7(1) [expenses/services covered]</p> <p>s. 7(2) [maximum monthly benefit amount]</p> <p>s. 7(3) [maximum aggregate benefit amount]</p> <p>Damages to Clothing, Glasses, Hearing Aids and Other Devices</p> <p>s. 8 [expenses/services covered]</p> <p>Exception</p> <p>s. 9(1) [ss. 6-7 expenses otherwise recoverable]</p>	<p>—</p> <p>C: subs. 2, Part III(A)(a)</p> <p>—</p> <p>C: subs. 3(1)(a-f)</p> <p>C: subs. 3(1)(e)</p> <p>C: subs. 2, Part I(B)(3)</p> <p>C: [preamble]</p> <p>C: subs. 3 suffix</p> <p>C: subs. 1(1)</p> <p>C: subs. 1(1)</p> <p>C: subs. 1(1)</p> <p>—</p> <p>C: subs. 1(1)</p> <p>C: subs. 1(1)</p> <p>—</p> <p>C: subs. 1(1)</p> <p>C: subs. 1(1); C: subs. 2, Part II(2)</p> <p>C: subs. 1(1); C: subs. 2, Part II(2)</p> <p>C: subs. 1(1); C: subs. 2, Part II(2)</p> <p>C: subs. 1(1) suffix</p> <p>C: subs. 1; C: subs. 3(8)</p>

STATUTORY ACCIDENT BENEFITS SCHEDULE (R.R.O. 1990, Reg. 672; am. 660/93; 779/93)	SCHEDULE C (repealed)
<p>s. 9(2) [no deduction for social service benefits]</p> <p>PART III – FUNERAL EXPENSES AND DEATH BENEFITS</p> <p>Funeral Expenses</p> <p>s. 10 [benefit amount(s)]</p> <p>Death Benefits</p> <p>s. 11(1) [conditional/amount/beneficiary]</p> <p>s. 11(2) [optional benefits]</p> <p>s. 11(3) [benefit period]</p> <p>s. 11(4) [multiple spouses]</p> <p>s. 11(5) [multiple dependants]</p> <p>s. 11(6) [minimum survivorship period requirement]</p> <p>PART IV – WEEKLY BENEFITS</p> <p>Income Benefit</p> <p>s. 12(1) [eligibility: “own” occupation disability]</p> <p>s. 12(2) [eligibility qualifications – employment]</p> <p>s. 12(3) [eligibility: unemployed persons]</p> <p>s. 12(4) [weekly benefit amount]</p> <p>s. 12(5) [benefit period; co-insurance; “any” occupation disability]</p> <p>s. 12(6) [eligibility qualifications: employment commencement]</p> <p>s. 12(7) ¶1-2 [gross weekly income calculation rules]</p> <p>s. 12(7) ¶3 [business expenses deduction]</p> <p>Benefit if No Income</p> <p>s. 13(1) [eligibility: “normal” occupation]</p> <p>s. 13(2) [eligibility qualifications caregiver/housekeeper]</p> <p>s. 13(3) [weekly benefit amount]</p> <p>s. 13(4) [weekly benefit amount: caregiver]</p> <p>s. 13(5) [maximum weekly benefit amount]</p> <p>s. 13(6) [cessation of weekly benefits]</p> <p>s. 13(7) [benefit duplication prohibition]</p> <p>s. 13(8) [benefit period: co-insurance]</p> <p>Interim Payments</p> <p>s. 14</p> <p>Deductions</p> <p>s. 15 [80% deduction re post-accident]</p> <p>Temporary Return to School or Work</p> <p>s. 16</p>	<p>—</p> <p>C: subs. 1(2)</p> <p>C: subs. 2, Part I(A)</p> <p>—</p> <p>C: subs. 2, Part I(A)</p> <p>C: subs. 2, Part I(A)</p> <p>C: subs. 2, Part I(A)</p> <p>C: subs. 2, Part II preamble</p> <p>C: sub. 2, Part II(a); C: subs. 2, Part II(3)</p> <p>C: subs. 2, Part II(3)</p> <p>C: subs. 2, Part II – Amount of Weekly Payment (a-b)</p> <p>C: subs. 2, Part II(c); C: subs. 2, Part II(5)</p> <p>C: subs. 2, Part II(a); C: subs. 2, Part II(3)</p> <p>C: subs. 2, Part II – Amount of Weekly Benefit (b); C: subs. 2, Part II(1)</p> <p>C: subs. 2, Part II(5)</p> <p>—</p> <p>C: subs. 2, Part II(2)</p> <p>—</p> <p>—</p> <p>—</p> <p>—</p> <p>—</p> <p>—</p> <p>C: subs. 3(7)</p> <p>C: subs. 2, Part II(1); C: subs. 2, Part II(5)</p> <p>C: subs. 2, Part II(4)</p>

STATUTORY ACCIDENT BENEFITS SCHEDULE (R.R.O. 1990, Reg. 672; am. 660/93; 779/93)	SCHEDULE C (repealed)
<p>Exclusions</p> <p>s. 17(1) [driver – impaired, convicted, unauthorized/ suspended, excluded driver, uninsured, lack of consent]</p> <p>s. 17(2) [saving suspended driver]</p> <p>s. 17(3) [misrepresentation: lack of consent]</p> <p>s. 17(4) [saving excluded driver]</p>	<p>C: subs. 3(2)</p> <p>—</p> <p>—</p> <p>—</p>
PART V – ACCIDENTS IN QUEBEC	
<p>Benefits</p> <p>s. 18(1) [benefit election]</p> <p>s. 18(2) [election: eligible benefits]</p> <p>s. 18(3) [election: ineligible benefits]</p> <p>s. 18(4) [person insured in Quebec defined]</p>	<p>C: subs. 2, Part III(A-B); C: subs. 2, Part II – Amount of Weekly Payments (b)(iii)</p> <p>C: subs. 2, Part III(A-B); C: subs. 2, Part II – Amount of Weekly Payments (b)(iii)</p> <p>C: subs. 2, Part III(A-B); C: subs. 2, Part II – Amount of Weekly Payments (b)(iii)</p> <p>C: subs. 2, Part III(A-B); C: subs. 2, Part II – Amount of Weekly Payments (b)(iii)</p>
PART VI – OPTIONAL BENEFITS	
<p>Options</p> <p>s. 19(1) [insurer must offer: increased benefit amounts]</p> <p>s. 19(2) [purchase at any time before accident]</p>	<p>—</p> <p>—</p>
PART VII – WORKERS' COMPENSATION	
<p>Effect of Workers' Compensation Benefits</p> <p>s. 20 [integration and offset]</p>	<p>C: subs. 3(2)</p>
<p>Interim Payments</p> <p>s. 21 [overpayment amount recoverable: formula]</p>	<p>C: subs. 3(7)</p>
PART VIII – MISCELLANEOUS	
<p>Notice, Application for Benefits</p> <p>s. 22(1)(a) [initial notice of claim]</p> <p>s. 22(1)(b) [written application required: limitation time period]</p> <p>s. 22(2) [saving limitation time period]</p>	<p>C: subs. 3(3)</p> <p>—</p> <p>—</p>
<p>Certificates, Examinations</p> <p>s. 23(1) [medical certificate requirement]</p> <p>s. 23(2) [medical, etc., examinations; autopsy]</p> <p>s. 23(3) [cost of examinations]</p> <p>s. 23(4) [cost of medical certificate(s)]</p>	<p>C: subs. 3(4-5)</p> <p>C: subs. 3(5)</p> <p>—</p> <p>—</p>
<p>Payment of Claims, Refusal to Pay</p> <p>s. 24(1) [overdue dates: medical, rehab, care, funeral and death benefits payment]</p> <p>s. 24(2) [overdue dates: weekly benefits payment]</p>	<p>C: subs. 3(7)</p> <p>C: subs. 3(7)</p>

STATUTORY ACCIDENT BENEFITS SCHEDULE (R.R.O. 1990, Reg. 672; am. 660/93; 779/93)	SCHEDULE C (repealed)
s. 24(3) [weekly benefits payment every two weeks]	—
s. 24(4) [interest payable and percentage rate on overdue benefits]	—
s. 24(5) [prepayment of benefits by insurer]	—
s. 24(6) [saving payment not overdue pending outstanding certificate]	—
s. 24(7) [payment within 10 days of certificate receipt]	—
s. 24(8) [notice of benefit payment refusal]	—
Restriction on Proceedings	
s. 25 [prerequisite to mediation]	C: subs. 3(7)(b)
Time Limit for Proceedings	
s. 26	C: subs. 3(7)(c)
Repayments to Insurer	
s. 27(1-2) [re: error, fraud, disqualified claimant offset amounts]	—
s. 27(4-5) [interest charge: bank rate defined]	—
Copies of Schedule	
s. 28 [upon request of insured: no charge]	—
Forms	
s. 29(1) [initial application — Form 1; additional benefits application — Form 2]	—
s. 29(2) [funeral and death benefits application — Form 3]	—
s. 29(3) [certificate — Form 4]	—

CONCORDANCE

Schedule C to Statutory Accident Benefits Schedule

(Note : Concurring sections cited are not verbatim, and may constitute a topical relationship at best.)

SCHEDULE C (repealed)	STATUTORY ACCIDENT BENEFITS SCHEDULE (R.R.O. 1990, Reg. 672; am. 660/ 93; 779/93)
<p>MANDATORY MEDICAL AND REHABILITATION BENEFITS, AND ACCIDENT BENEFITS IN MOTOR VEHICLE LIABILITY POLICIES</p> <p>ACCIDENT BENEFITS SECTION Schedule C [application]</p> <p>SUBSECTION 1 – MEDICAL, REHABILITATION AND FUNERAL EXPENSES</p> <p>C: subs. 1(1) [medical/rehabilitation expenses]</p> <p>C: subs. 1(2) [funeral expenses]</p> <p>C: subs. 1 suffix [portion of expenses not recoverable]</p> <p>SUBSECTION 2 – DEATH BENEFITS AND LOSS OF INCOME PAYMENTS</p> <p>Part I – Death Benefits</p> <p>C: subs. 2, Part I(A) [amounts]</p> <p>C: subs. 2, Part I(B)(1) [spouse of the head of the household]</p> <p>C: subs. 2, Part I(B)(2) [spouse]</p> <p>C: subs. 2, Part I(B)(3) [dependant]</p> <p>C: subs. 2, Part I(B)(4)</p> <p>C: subs. 2, Part I(B)(5)</p> <p>C: subs. 2, Part I(B)(6)</p> <p>Part II – Loss of Income</p> <p>C: subs. 2, Part II preamble [application]</p> <p>C: subs. 2, Part II(a)</p> <p>C: subs. 2, Part II(b)</p> <p>C: subs. 2, Part II(c)</p> <p>C: subs. 2, Part II – Amount of Weekly Payment (a)</p> <p>C: subs. 2, Part II – Amount of Weekly Payment (b)</p> <p>C: subs. 2, Part II – Amount of Weekly Payment (b)(i)</p> <p>C: subs. 2, Part II – Amount of Weekly Payment (b)(ii)</p> <p>C: subs. 2, Part II – Amount of Weekly Payment (b)(iii)</p> <p>C: subs. 2, Part II – Amount of Weekly Payment [saving]</p> <p>C: subs. 2, Part II(1) [deduction from gross weekly income]</p> <p>C: subs. 2, part II(2) [principal unpaid housekeeper]</p> <p>C: subs. 2, part II(3) [deemed employed]</p>	<p>s. 4; s. 268 <i>Insurance Act</i></p> <p>ss. 6, 7, 8</p> <p>s. 10</p> <p>s. 9</p> <p>s. 11</p> <p>—</p> <p>s. 224 <i>Insurance Act</i></p> <p>s. 3(2)</p> <p>s. 11</p> <p>s. 11</p> <p>s. 11</p> <p>s. 12(1)</p> <p>s. 12(2) ¶1; 12(6)</p> <p>s. 12(2) ¶2</p> <p>s. 12(5)</p> <p>s. 12(4)(a)</p> <p>s. 12(4)(b); 12(7)</p> <p>s. 12(4)(b)(i)</p> <p>s. 12(4)(b)(ii)</p> <p>s. 18</p> <p>—</p> <p>ss. 15; 12(7)</p> <p>ss. 13(2); 7</p> <p>s. 12(2); 12(3); 12(6)</p>

SCHEDULE C (repealed)	STATUTORY ACCIDENT BENEFITS SCHEDULE (R.R.O. 1990, Reg. 672; am. 660/ 93; 779/93)
<p>C: subs. 2, part II(4) [temporary return to work] C: subs. 2, part II(5) [deductions] Part III – Supplemental Benefits respecting Accidents occurring in Quebec C: subs. 2, Part III(A)(a) [accident] C: subs. 2, Part III(A)(b) [bodily injury] C: subs. 2, Part III(A)(c) [resident of Ontario] C: subs. 2, Part III(A)(d) [person insured in Quebec] C: subs. 2, Part III(B) SUBSECTION 3 – SPECIAL PROVISIONS, DEFINITIONS AND EXCLUSIONS OF THIS SECTION C: subs. 3(1) (a-f) [insured person defined] C: subs. 3(2) [exclusions] C: subs. 3(3) [notice and proof of claim] C: subs. 3(4) [medical reports] C: subs. 3(5) [physician defined] C: subs. 3(6) [release] C: subs. 3(7) [when moneys payable] C: subs. 3(8) [limitation on benefit payable] C: subs. 3 suffix [application of policy and Act]</p>	<p>s. 16 ss. 12; 15 s. 2 — — s. 18(4) s. 18(1) s. 2 – insured person ss. 17; 12; 20 s. 22(1) s. 23 s. 23(2) s. 274 <i>Insurance Act</i> ss. 24-26; 14; 21 s. 9; s. 274 <i>Insurance Act</i> s. 5</p>

REGULATION 673

ORDER UNDER PARAGRAPH 1 OF SUBSECTION 108(2) OF THE ACT — RATES OF INTEREST

R.R.O. 1990, Reg. 673; am. O. Reg. 120/91; O. Reg. 201/92; O. Reg. 764/92; O. Reg. 782/92; O. Reg. 385/93; O. Reg. 424/94; O. Reg. 239/95; O. Reg. 40/96

1. A company referred to in column 1 of the Schedule is authorized to assume the rate of interest set opposite thereto in column 2 for the class of policy set opposite thereto in column 3.

SCHEDULE

Item No.	Column 1	Column 2	Column 3
1	Gerling Global Life Insurance Company	6%	Single Premium Immediate Annuities with respect to premiums accepted on or after January 1, 1973.
2	Gerling Global Life Insurance Company	6%	Income Average Annuities with respect to premiums accepted on or after January 1, 1973.
3	Gerling Global Life Insurance Company	5.5%	Single Premium Deferred Annuities with respect to premiums accepted on or after January 1, 1973.
4	Gerling Global Life Insurance Company	9.0%*	Single premium adjustable whole life non-participating plan issued on or after January 1, 1980 and non-fixed premium Infiniterm plan issued on or after January 1, 1987. [re-en. O. Reg. 120/91]
5	Gerling Global Life Insurance Company	5.75%*	Single premium adjustable whole life non-participating insurance policies, commencing on the sixth anniversary from date of issue of each of such policies, and thereafter.

Item No.	Column 1	Column 2	Column 3
6	Gerling Global Life Insurance Company	6%	Annual Premium ordinary whole life non-participating policies issued and in force in 1982 and each year thereafter provided that the reserves are equal to or greater than the corresponding policy cash values at all durations.
7	Gerling Global Life Insurance Company	9.5%* for 5 years then reducing to 5.5% over next 15 years	Annual premium ordinary whole life non-participating insurance policies issued on or after January 1, 1982.
8	Gerling Global Life Insurance Company	9.5%*	Non-fixed annual premium adjustable whole [life] non-participating insurance policies issued on or after January 1, 1981 and non-fixed premium Lifemaster plan issued on or after January 1, 1985. [re-en. O. Reg. 120/91]
9	Gerling Global Life Insurance Company	9.5%*	Annual premium five year renewable and convertible term non-participating insurance policies issued on or after January 1, 1981.
10	Union of Canada Life Insurance	5.5%	Immediate Annuities issued prior to January 1, 1969.
11	Union of Canada Life Insurance	6.25%	Immediate Annuities issued on or after January 1, 1969 and prior to January 1, 1974.

Item No.	Column 1	Column 2	Column 3
12	Union of Canada Life Insurance	6.75%	Immediate Annuities issued on or after January 1, 1974.
13	Union of Canada Life Insurance	5.5%	Deferred Annuities issued on or after January 1, 1976.
14	Union of Canada Life Insurance	8%	Immediate Annuities issued on or after January 1, 1978 and prior to January 1, 1979.
15	Union of Canada Life Insurance	8%	Income Averaging Annuities issued on or after January 1, 1978 and prior to January 1, 1979.
16	Union of Canada Life Insurance	10% or less	Annuities Certain issued on or after January 1, 1979 and prior to January 1, 1980.
17	Union of Canada Life Insurance	Rate as specified in contract* *	Deposits made prior to January 1, 1987 into Deposit Administration Contracts.
18	Union of Canada Life Insurance	Lesser of 12% or rate assumed in premium basis	Immediate Annuities and Annuities Certain issued on or after January 1, 1980 and prior to January 1, 1986.
19	Union of Canada Life Insurance	Lesser of 10% or rate assumed in premium basis	Deposits made into Deposit Administration Contracts on or after January 1, 1987 and prior to January 1, 1991. [re-en. O. Reg. 120/91]

Item No.	Column 1	Column 2	Column 3
20	Union of Canada Life Insurance	9.25%	Immediate Annuities issued on or after January 1, 1979 and prior to January 1, 1980.
21	Union of Canada Life Insurance	Lesser of 10% or rate assumed in premium basis	Immediate Annuities and Annuities Certain issued on or after January 1, 1986 and prior to January 1, 1991. [re-en. O. Reg. 120/91]
22	Union of Canada Life Insurance	9% in the first year, decreasing by 0.2% in each of the following fourteen years; and 9% after the fifteenth year	Whole life plan (Ultra Life) issued prior to January 1, 1993.
23	Union of Canada Life Insurance	6.5%	Whole life plan (Progression 15) issued on or after January 1, 1987.
24	Security Life Insurance Company Limited	9.926%	All deferred and immediate annuities that are in force on December 31, 1994.
25	Union of Canada Life Insurance	6% during the first 15 years; 9% after the 15th year	Whole life plan (Ultra Life insurances policies) issued during 1993.

Item No.	Column 1	Column 2	Column 3
26	Annuity Life Insurance Company	10.34% for 1988; 10.32% for 1989 and 1990; 10.29% for 1991 to 1999; 10.25% for 2000 and 2001; 10.10% for 2002 to 2006; and 6% after 2006	Single premium immediate annuities and registered retirement savings plan policies issued before January 1, 1988.
27	Annuity Life Insurance Company	Lesser of, i. 11.86%, or ii. the rate assumed in premium basis plus 0.1%	Registered Retirement Income Fund policies issued before January 1, 1988.
28	Annuity Life Insurance Company	11.0% for each year up to 2010; and 6% thereafter	Single premium immediate annuities issued after December 31, 1987 and before January 1, 1991. [re-en. O. Reg. 120/91]

Item No.	Column 1	Column 2	Column 3
29	Annuity Life Insurance Company	Lesser of, i. 11.36%, or ii. the rate assumed in premium basis plus 0.1%	Registered Retirement Income Fund (RRIF) policies issued after December 31, 1987 and before January 1, 1991. [re-en. O. Reg. 120/91]
30	Annuity Life Insurance Company	Lesser of, i. 11.25%, or ii. the rate specified in policy	Registered Retirement Savings Plan policies issued after December 31, 1987 and before January 1, 1991. [re-en. O. Reg. 120/91]
31	Gerling Global Life Insurance Company	8.5%* for 5 years then reducing to 5.5% over next 31 years	Fixed annual premium Infiniterm plan issued on or after January 1, 1988. [en. O. Reg. 120/91]
32	Gerling Global Life Insurance Company	9.5%* for 5 years then reducing to 6.5% over next 31 years	Fixed annual premium ten year renewable and convertible term plan issued on or after January 1, 1986. [en. O. Reg. 120/91]
33	Union of Canada Life Insurance	6.0%	Whole life plan (participating and non-participating) issued on or after January 1, 1990. [en. O. Reg. 120/91]
34	Canadian Trinity Life Insurance Company	7%	Creditor's group insurance contracts issued on or after January 1, 1992.

Item No.	Column 1	Column 2	Column 3
35	Union of Canada Life Insurance	6% during the first 15 years; 9% after the 15th year	Whole life plan (Ultra Life Insurance policies) issued during 1994.

* NOTE: The reserves maintained under a policy shall always be greater than the corresponding cash value of the policy.

** NOTE: The reserves shall be equal to or greater than the corresponding cash value of the contract.

O. Reg. 120/91, s. 1; O. Reg. 201/92, s. 1.; O. Reg. 764/92, s. 1; O. Reg. 782/92, s. 1, 2; O. Reg. 385/93, s. 1; O. Reg. 424/94; O. Reg. 239/95.

REGULATION 674

REPLACEMENT OF LIFE INSURANCE CONTRACTS

R.R.O. 1990, Reg. 674; am O. Reg. 761/94

1. In this Regulation,

“replacement of a contract of life insurance”.—“replacement of a contract of life insurance” means a transaction whereby life insurance is purchased in a single contract or in several related contracts by a person from an insurer and as a consequence of the transaction one or more contracts of the insurance are,

- (a) rescinded, lapsed or surrendered,
- (b) changed to paid-up insurance or continued as extended term insurance or under automatic premium loan,
- (c) changed in any manner so as to effect a reduction in benefits,
- (d) changed so that cash values in excess of 50 per cent of the tabular cash value of the insurance contract are released, or
- (e) subjected to borrowing of any policy loan values whether in a single loan or under a schedule of borrowing over a period of time whereby an amount in excess of 50 per cent of the tabular cash value is borrowed on one or more contracts of life insurance,

but does not include a transaction where,

- (f) a new contract of life insurance is made with an insurer with whom the person has an existing contract of life insurance in furtherance of a contractual conversion privilege exercised by the person,
- (g) a contract is replaced by an annuity, or
- (h) a contract is replaced by group insurance;

“working day”.—“working day” means a day other than Saturday or a holiday.

Duties of Agent

2. (1) Every agent for an insurer shall, upon receiving an application for a contract of insurance,

- (a) obtain as part of the application, a statement signed by the applicant that sets out whether or not replacement of a contract of life insurance is intended; and
- (b) forward to the insurer with the application a statement signed by the agent that sets out whether or not replacement of a contract of life insurance is intended.

(2) Where replacement of a contract of life insurance is intended, the agent shall,

- (a) prior to accepting an application for a contract of insurance,
 - (i) obtain from the applicant a list of all life insurance contracts intended to be replaced,
 - (ii) complete, sign, review with the applicant and leave with the applicant a disclosure statement in Form 1 respecting each contract of life insurance intended to be replaced, and
 - (iii) obtain on each completed disclosure statement referred to in subclause (ii), the signature of the applicant and the signature of the life insured, if other than the applicant, attesting to the receipt of the completed disclosure statement;
- (b) within three working days from the date of receiving the application for the contract of insurance, forward to every insurer whose contract is intended to be replaced, a copy of the completed disclosure statement as presented to and signed by the applicant without the information reported under the column entitled "Proposed Replacement Policy";
- (c) where there is borrowing on an existing contract of insurance involved in the transaction, caution the applicant that it is not usually advisable to borrow against policy loan values beyond the expected ability or intention of the applicant to repay;
- (d) forward to each insurer requested to issue a new life insurance contract,
 - (i) an application for a contract of insurance,
 - (ii) a copy of the completed disclosure statement as presented to and signed by the applicant,
 - (iii) a copy of all written proposals presented to the applicant by the agent during the solicitation of the application for a contract of insurance,
 - (iv) all written directions received from the applicant; and
- (e) deliver each new contract of life insurance to the applicant as soon as is practical in the circumstances after receiving it from the insurer, unless contrary written directions have been received from the applicant. O. Reg. 761/94, s. 1.

Duties of Insurer

3. Every insurer shall,

- (a) where the insurer receives an application that discloses that replacement of a contract of life insurance is intended, ensure that a duly completed copy of Form 1 is filed with the application;
- (b) maintain [in] its principal office or place of business in Canada for at least three years, copies of all material forwarded by its agent under this Regulation;

- (c) upon receiving and approving an application for a new contract of life insurance, issue the new contract of life insurance as soon as is practical in the circumstances;
- (d) provide such information as is necessary to other insurers or their agents for purposes of completing Form 1, as soon as is practicable in the circumstances after receiving a request for such information; and
- (e) upon providing information under clause (d), make a written record of the information and maintain the record for at least three years.

4. (1) An applicant for the replacement of a contract of life insurance may withdraw the application within twenty days of the delivery to the applicant of the disclosure statement referred to in subclause 2(2)(a)(ii) by notifying the insurer or any agent of the insurer of the applicant's intention to withdraw the application.

(2) Where an applicant withdraws an application for the replacement of a contract of life insurance, the insurer shall refund any premium deposit or other payment made by the applicant in respect of the proposed replacement of a contract of life insurance, except where the application is for a single premium life insurance policy or a policy the value of which depends upon a stated rate of interest or a stated group of assets.

(3) Where an applicant withdraws an application with respect to a single premium life insurance policy or a policy the value of which depends upon a stated rate of interest or a stated group of assets, the refund shall be adjusted to reflect the change in the capital value of the contract.

LIFE INSURANCE DISCLOSURE FORM

If you are replacing a current insurance policy, you should be given this form *before* you fill out an application for the new insurance. The form outlines some of the details of your current policy and the proposed policy.

The new insurance company must give you a copy of your policy once it has been approved. You have 20 days from the time you receive a copy of this disclosure form to withdraw the new application and receive a full refund of any premiums paid.

Ask yourself the following questions as you look over this form.

- ▶ **Is the new policy enough of an improvement to justify any new costs?** All new policies have some new costs, such as those for underwriting, administration and agent's commission.
- ▶ **Do premiums under the new policy rise as you age?** The premiums on some policies go up as you get older or if you get sick.
- ▶ **Are there circumstances where your new policy does not pay benefits?** Part A of this form tells you if your policy will not pay because of suicide or because you provided incomplete information.
- ▶ **Does the new policy pay you as much as the current one?** Make sure you look over the details of death benefits, cash value, and dividends carefully.
- ▶ **Does the new policy guarantee to insure you, or allow you to increase your insurance coverage, no matter what your future medical condition?** Your current policy may do this.
- ▶ **Does your new policy let you borrow money at attractive interest rates?** Your current policy may do this.
- ▶ **Are you losing tax advantages or creating a tax liability?** Many current insurance policies provide valuable income tax benefits. These benefits are not available with some new policies. Cancellation of your current policy may increase your income tax this year. Make sure that you fully understand the tax consequences of changing policies.

IMPORTANT

1. DO NOT SIGN THIS FORM UNLESS IT HAS BEEN COMPLETELY FILLED OUT.
2. DO NOT CANCEL YOUR OLD INSURANCE POLICY UNTIL THE NEW ONE IS IN FORCE AND DELIVERED. SIGNING THIS FORM DOES NOT CANCEL YOUR OLD POLICY.
3. NOTE THAT YOU HAVE TO SIGN THE FORM HERE AND ON THE THIRD PAGE.

I have read this notice completely, and the agent explained the significance of the information contained in all parts of the form to me.

Consumer's signature: X

Date: _____

LIFE INSURANCE DISCLOSURE FORM

<i>please print</i>	Your Current Policy	Proposed Replacement Policy
PART A — General Information		
Policy number		<i>not applicable</i>
Insurance company		
Date of issue		<i>not applicable</i>
Name of the person whose life is insured		
Name of the person who owns the policy (if not owned by the person who is insured)		
Type of policy (whole life, term, universal, etc.)		
Will you have to pay extra premiums or will your coverage be reduced if you smoke, have health problems, or work at a risky occupation?		
Is the policy registered as an RRSP?		
Most policies will not pay if the person insured commits suicide within two years of the policy's issue date. When does the suicide period on this policy expire?		
A policy may not pay if information on the application was incomplete (for example, if the insured person did not disclose a previous illness to the insurance company). If this information is not discovered within a certain period (usually two years), however, the policy will pay, in the absence of fraud. On what date does this period expire?		
Does the policy give the right to buy additional insurance, whatever the insured person's health? If yes, when and how much?		
Does the policy have any other benefits, e.g., waiver of premium?		
PART B — Premiums		
A premium is the amount of money you pay the insurance company to be insured. Some policies guarantee that the premium amount will stay the same for the length of the policy. Will this policy's premium stay the same?		
What is the annual premium? If Universal Life, what premium is being paid currently? Is there a minimum premium? Is there a maximum premium?		
How and when will it change?		
If Universal Life, is the formula by which expenses are calculated guaranteed?		
Does any of the coverage change over time?		
If yes, which coverage changes?		
By how much?		

LIFE INSURANCE DISCLOSURE FORM *Continued*

<i>please print</i>	Your Current Policy	Proposed Replacement Policy
PART C — Guaranteed Death Benefits		
What does the policy pay if the insured person dies today?		
Will this amount change or expire at any time?		
If so, how?		
If Universal Life, is the charge for the death benefit guaranteed?		
PART D — Cash Value, Dividends and Loans		
Some policies have a cash value, which means that some of the insurance premium goes into a reserve that grows in value. The owner of the policy has the option of taking out this cash value, which may end the policy or reduce the death benefit. Does this policy have a cash value?		
If yes, what is the total cash value at the last anniversary?		
What will the guaranteed cash value be at: <div style="display: inline-block; vertical-align: middle;"> age 65? age 70? age 75? </div>		
Can loans be taken out on this policy? If yes, at what interest rate may money be borrowed, and on what terms (for example, a set maximum or a variable rate)?		
Is there a loan currently outstanding on the policy?		
Some policies pay dividends based on the performance of the insurance company. Is this policy eligible for dividends?		
If so, what dividend option was selected? (For example, increased insurance coverage, reduced premiums, cash payouts, accumulation)		
How much was the most recent dividend?		
If Universal Life, is there a minimum investment guarantee?		

NOTE: Because there are many costs associated with issuing a new policy, it may be in your financial interests to amend the current policy rather than replacing it. In considering your replacement decision, you may wish to seek the advice of the company that issued your current policy.

	Consumer's Name (<i>please print</i>)
X	Consumer's Signature
	Date

	Agent's Name (<i>please print</i>)
X	Agent's Signature
	Province and Licence Number

Agent's Statement

I have completed this form fully and accurately, and have explained the significance of all of the information contained on the form to the consumer.

REGULATION 675

SCHEDULE OF FEES

R.R.O. 1990, Reg. 675; am. O. Reg. 230/92; O. Reg. 762/94, ss. 1, 2

1. Fees are payable to the Commission in the amounts set out in the Schedule. [Re-en. O. Reg. 230/92, s. 1]

SCHEDULE

Items 1 – 10. [Revoked by O. Reg. 230/92, s. 2.]

AGENTS AND ADJUSTERS

(Sections 393 and 397 of the Act)

11. For agents' licences for any class of insurance,
- | | |
|--|-----------|
| i. for renewal of the licence of an individual | \$ 150.00 |
| ii. for renewal of the licence of a partnership | 200.00 |
| iii. for renewal of the licence of a corporation | 400.00 |
| iv. for the transfer or revival of a licence | 50.00 |

O. Reg. 762/94, s. 1

- 11.1 For the issue of agents' licences for any class of insurance, the fee that would be payable for a renewal plus a pro-rated amount, based on that renewal fee, for the time by which the term of the licence exceeds two years. O. Reg. 762/94, s. 1

12. For insurance adjusters' licences and renewals thereof,
- | | |
|--|-----|
| i. where the applicant is an individual | 75 |
| ii. where the applicant is a proprietor, partnership or corporation .. | 200 |
13. For,
- | | |
|---|----|
| i. an application to write an examination by an agent whether the examination is written or not | 70 |
| ii. a certificate in respect of an agent or adjuster | 15 |

MISCELLANEOUS

14. For a certified or duplicate copy of a licence	10
15. For a certificate under section 25 of the Act, other than a certificate referred to in subitem ii of item 13	10
16. For an annual subscription for the decisions of arbitrators appointed under the Act and for the decisions of the Director on appeal from the decisions of arbitrators	100
17. For photocopies, per page50

2. An agent who holds a licence that, but for the amendments made by Ontario Regulation 760/94, would have expired on March 31, 1995, shall pay a renewal fee on or before April 1, 1995. The amount of the fee shall be a pro-rated amount, based on the amount that would be payable for a renewal for the time between March 31, 1995 and the date the licence will expire. O. Reg. 762/94, s. 2.

3. An agent who holds a licence that, but for the amendments made by Ontario Regulation 760/94, would have expired on September 30, 1995, shall pay a renewal fee on or before October 1, 1995. The amount of the fee shall be a pro-rated amount, based on the amount that would be payable for a renewal for the time between September 20, 1995 and the date the licence will expire. O. Reg. 762/94, s. 2.

REGULATION 676

UNINSURED AUTOMOBILE COVERAGE

R.R.O. 1990, Reg. 676; am. O. Reg. 778/93

1. The terms, conditions, provisions, exclusions and limits set out in the following Schedule apply to payments under a motor vehicle liability policy under subsection 265(1) of the Act and shall be attached to or included in every motor vehicle liability policy, as a Schedule in or to the policy.

SCHEDULE

UNINSURED AUTOMOBILE COVERAGE

Application

1. This Schedule applies to the payments provided for under every contract evidenced by a motor vehicle liability policy under subsection 265(1) of the Act.

Limits and Exclusions

2. (1) The insurer shall not be liable to make any payment,
- (a) for any amount in excess of the minimum limits for automobile liability insurance in the jurisdiction in which the accident occurs regardless of the number of persons injured or killed or the damage to the automobile and contents, and in no event shall the insurer be liable for any amount in excess of the minimum limits set out in section 251 of the Act;
 - (b) where a person insured under the contract is entitled to recover money under any valid policy of insurance other than money payable on death, except for the difference between such entitlement and the relevant minimum limits determined under clause (a);
 - (c) where the person insured under the contract is entitled to recover money under the third party liability section of a motor vehicle liability policy;
 - (d) to any person involved in an accident in a jurisdiction in which a valid claim may be made for such payment against an unsatisfied judgment or similar fund;
 - (e) for any loss or damage caused directly or indirectly by radio-active material;
 - (f) in respect of damages for accidental damage to the insured automobile and its contents, for the first \$100 of any loss in any one occurrence nor any amount in excess of \$25,000; or

- (g) for any loss or damage that occurs while the insured automobile is being operated by an excluded driver.
- (2) Where by reason of any one accident, liability results from bodily injury or death and from damage to the insured automobile or its contents,
 - (a) claims arising out of bodily injury or death have priority to the extent of 95 per cent of the amount payable over claims arising out of damages to the insured automobile and its contents; and
 - (b) claims arising out of damage to the insured automobile and its contents have priority to the extent of 5 per cent over claims arising out of bodily injury or death.

Accidents Involving Unidentified Automobiles

- 3. (1) This section applies if an unidentified automobile has caused bodily injury or death to a person insured under the contract.
- (2) The person, or his or her representative, shall report the accident to a police officer, peace officer or judicial officer within twenty-four hours after it occurs or as soon as is practicable after that time.
- (3) The person, or his or her representative, shall give the insurer a written statement within thirty days after the accident occurs or as soon as is practicable after that date setting out the details of the accident.
- (4) The statement shall state whether the accident was caused by a person whose identity cannot be ascertained and whether the person insured under the contract was injured or killed and property was damaged in the accident.
- (5) The person, or his or her representative, shall make available for inspection by the insurer upon request the automobile in which the person was an occupant when the accident occurred.

Determination of Legal Liability and Amount of Damages

- 4. (1) The determination as to whether the person insured under the contract is legally entitled to recover damages and, if so entitled, the amount thereof shall be determined,
 - (a) by agreement between the person insured under the contract and the insurer;
 - (b) at the request of the person insured under the contract, and with the consent of the insurer, by arbitration by some person to be chosen by both parties, or if they cannot agree on one person, then by two persons, one to be chosen by the person insured under the contract and the other by the insurer and a third person to be appointed by the persons so chosen; or

(c) by a court of competent jurisdiction in Ontario in an action brought against the insurer by the person insured under the contract, and unless the determination has been previously made in a contested action by a court of competent jurisdiction in Ontario, the insurer may include in its defence the determination of liability and the amount thereof.

(2) The *Arbitrations Act* applies to every arbitration under clause (1)(b) of this section.

Notice of Legal Action

5. (1) Where the person insured under the contract or the person's representative commences a legal action for damages against any other person owning or operating an automobile involved in the accident, a copy of the writ of summons or other proceeding shall be delivered or sent by registered mail immediately to the chief agency or head office of the insurer in Ontario.

(2) Subject to section 2 of this Schedule, where the person insured under the contract or the person's representative obtains a judgment against the other person referred to in subsection (1) of this section but is unable to recover, or to recover fully the amount of that judgment, the insurer shall, on request, pay the amount of that judgment or, as the case may be, the difference between what the person insured has recovered under that judgment and the amount of that judgment.

(3) Before making any payment under subsection (2), the insurer may require that the person insured under the contract or the person's representative assign the judgment, or the balance of the judgment, as the case may be, to the insurer and the insurer shall account to the person insured under the contract for any recovery it makes under that judgment for any amount in excess of what it has paid to that person and its costs.

Notice and Proof of Claim

6. (1) A person entitled to make a claim in respect of the bodily injury or death of a person insured under the contract shall do so in accordance with this section.

(2) The claimant shall give the insurer written notice of the claim within thirty days after the accident or as soon as is practicable after that date.

(3) The claimant shall give the insurer, within ninety days after the accident or as soon as is practicable after that date, such proof as is reasonably possible in the circumstances of the accident, the resulting loss and the claim.

(4) The claimant shall provide the insurer upon request with a certificate of the medical or psychological advisor of the person insured under the contract stating the cause of the injury or death and, if applicable, the nature of the injury and the expected duration of any disability.

(5) The claimant shall provide the insurer with the details of any other insurance policy, other than a life insurance policy, to which the claimant may have recourse.

(6) Statutory condition 7 of subsection 234(2) of the Act applies with necessary modifications with respect to a claim for damage to the insured automobile or its contents.

Medical Examinations

7. (1) On reasonable notice, the insurer may require the person insured under the contract to undergo an examination by a medical or psychological advisor as often as the insurer reasonably requires.

(2) On request, the insurer shall provide a copy of a report obtained under subsection (1) to a person making a claim under the contract. Repealed and substituted O. Reg. 778/93, s. 1.

(3) [Repealed O. Reg. 778/93, s. 1.]

(4) [Repealed O. Reg. 778/93, s. 1.]

Limitations

8. (1) No person is entitled to bring an action to recover an amount provided for under the contract, as required by subsection 265(1) of the Act, unless the requirements of this Schedule with respect to the claim have been complied with.

(2) An action or proceeding against an insurer in respect of loss or damage to the insured automobile or its contents shall be commenced within one year after the loss or damage occurs.

(3) An action or proceeding against an insurer in respect of bodily injury or death, or in respect of loss or damage to property other than the insured automobile or its contents, shall be commenced within two years after the cause of action arises.

Limit on Amount Payable

9. If a person insured under the contract is entitled to receive benefits under more than one contract providing insurance of the type described in subsection 265(1) of the Act, the person, any person claiming through or under the person or any person claiming under Part V of the *Family Law Act* is entitled to recover only an amount equal to one benefit.

Application of General Provisions

10. In so far as applicable, the general provisions, definitions, exclusions and statutory conditions as contained in a motor vehicle liability policy also apply to payments under the contract under subsection 265(1) of the Act.

11. In this Schedule, “person insured under the contract”, “unidentified automobile” and “uninsured automobile” have the same meaning as in subsection 265(2) of the Act.

REGULATION 677

VARIABLE INSURANCE CONTRACTS OF LIFE INSURERS

R.R.O. 1990, Reg. 677

1. In this Regulation,

“fund”.—“fund” means a separate and distinct segregated fund maintained by an insurer authorized to transact the business of life insurance in respect of the non-guaranteed benefits of a variable insurance contract;

“independent qualified appraiser”.—“independent qualified appraiser” means a qualified appraiser who is not in full-time employment of the insurer whose fund is being valued, or any associate or affiliated companies of the insurer;

“qualified appraiser”.—“qualified appraiser” means a person who,

- (a) is a member in good standing for a continuous period of not less than two years of,
 - (i) The Appraisal Institute of Canada and has been designated as a member (C.R.A.) or accredited member (A.A.C.I.),
 - (ii) The Royal Institute of Chartered Surveyors (Britain) and has been designated A.R.I.C.S. or F.R.I.C.S. under its Valuation Subdivision,
 - (iii) The American Institute of Real Estate Appraisers and has been designated M.A.I.,
 - (iv) The Society of Residential Appraisers, or
 - (v) Corporation des Évaluateurs Agréés du Québec, or
- (b) has been employed or in public practice primarily as a property appraiser for a period of not less than five years.

2. (1) that proposes to enter into a variable insurance contract shall, at least thirty days before offering to enter into such a contract, file with the Superintendent,

- (a) the form of the documents evidencing the variable insurance contract; and
- (b) a copy of an information folder to be used by the insurer in connection with the sale of that type of variable insurance contract certified by the president, vice-president, managing director or other director appointed for the purpose, and by the secretary or manager of the insurer.

(2) An insurer that has filed an information folder in respect of a variable insurance contract shall, as long as it continues to offer to enter into that type of variable contract, file with the Superintendent a copy of a new information folder in respect of that type of variable insurance contract certified as provided,

- (a) forthwith upon any material change in any facts set out in the latest information folder filed in respect of that type of variable insurance contract other than a change in the investments of the fund; and
- (b) within,
 - (i) one year and one month after the date of filing of the latest information folder, or
 - (ii) eighteen months of the date of the financial statement contained in the latest information folder,whichever is the earlier.

3. (1) The documents evidencing a variable insurance contract shall,

- (a) contain a statement in bold print warning that the contract includes benefits that are not guaranteed;
- (b) describe the benefits under the contract and indicate which benefits are guaranteed and which benefits are not guaranteed but fluctuate with the market value of the assets of the fund supporting them;
- (c) state,
 - (i) the method of determining the benefits related to the market value of the fund and the amount of the surrender value of these benefits, and
 - (ii) where provision is made for part of the premium to be allocated to provide the benefits related to the market value of the fund, the percentage of the premium so allocated;
- (d) state the times, which shall not be less than once monthly, at which the fund shall be valued and at which the value of the benefits related to the market value of the fund may be determined; and
- (e) describe the charges or methods of determining the charges against the fund for taxes, management or other expenses.

(2) The information folder relating to a variable insurance contract shall,

- (a) except with respect to item 1, present in narrative form, without reference to technical terms where possible or to inapplicable items, the information required by Form 1 in an order appropriate to best describing the contract itself and not necessarily in the order provided in Form 1;
- (b) contain or be accompanied by the statements of financial information in accordance with Forms 2 to 7 as of a date not earlier than the 31st day of December preceding the date of filing; and
- (c) contain a statement that the folder is not an insurance contract.

(3) The Superintendent may permit a summary of the information folder to be filed in addition to the information folder referred to in subsection (2), and in such case the

summary of the information folder so filed may be delivered to a prospective purchaser in lieu of the information folder delivered to the prospective purchaser under section 4.

- (4) The summary of the information folder relating to a variable contract shall,
 - (a) present in narrative form, without reference to technical terms where possible or to inapplicable items, the information required by items 1, 2, and paragraph 1 of item 6, and items 9 and 18 of Form 1;
 - (b) contain or be accompanied by a five year statement of the fund and a schedule of investments in accordance with Forms 5 and 6 as of a date not earlier than the 31st day of December preceding the date of filing; and
 - (c) contain a statement that the folder is not an insurance contract.

4. (1) Before an application for a variable insurance contract is signed by a prospective purchaser of a variable insurance contract, there shall be delivered to the prospective purchaser a true copy of the information folder then on file under section 2 that relates to the contract, but where a variable insurance contract does not provide for any other benefits dependent on the market value of a fund except that the insured or a beneficiary under the contract may elect that policy dividends or proceeds be retained for investment in the fund, or that policy proceeds may be applied under a variable settlement option, the delivery of a true copy of the information folder then on file under section 2 to the insured or beneficiary shall be made immediately prior to the making of such election.

(2) At the time of delivery of the information folder referred to in subsection (1) the insurer shall obtain therefor a written receipt signed by the prospective purchaser.

5. Where a prospective purchaser of a variable insurance contract is furnished with a proposal form that describes a particular contract,

- (a) the description shall be entered on a form prepared by the insurer;
- (b) the proposal form shall be consistent with the information folder for that particular contract; and
- (c) a specimen copy of the prepared form shall be filed with the Superintendent.

6. (1) No insurer or agent shall give any undertaking or make any promises as to the future value of a fund or any interest in a fund or any benefit supported by a fund.

(2) Any illustration of growth rates of a fund shall be based upon reasonable and clearly expressed assumptions and shall state that any part of the premium or other amount that is allocated to a fund is invested at the risk of the insured and may increase or decrease in value according to the fluctuations in the market value of the assets in the fund.

(3) Where an illustration of growth rates of a fund is based upon the past performance of a fund itself or of similar funds or of one or more indexes, it shall also be made clear that such past results should not be construed as being indicative of the future performance of the fund.

7. The insurer shall furnish, at least annually, a statement to the insured showing,
- (a) the amount, if any, allocated under the contract to the fund during the period covered by the statement;
 - (b) the value of the benefits related to the market value of the fund at the end of the period covered by the statement;
 - (c) the information required by Form 6, together with the amount of the charges, or the percentage rate of charges to the fund for taxes, management or other expenses, but excluding brokerage commissions, brokerage fees, transfer taxes and other expenses normally added to the cost of investments acquired or deducted from the proceeds of investments sold;
 - (d) in summary form, where mortgages are held in the fund to the extent that more than 15 per cent of the market value of the fund is invested in mortgages, an analysis of the mortgage portfolio by,
 - (i) location — (i.e., province),
 - (ii) class — (i.e., whether single-family residential, multiple-family dwelling up to four units, other residential, apartment, industrial, commercial, agricultural, NHA apartment, NHA other, insured or conventional),
 - (iii) market value — (i.e., indicate amount —
 - less than \$50,000
 - \$50,000 or more and less than \$250,000
 - \$250,000 or more and less than \$500,000
 - \$500,000 or more and less than \$1,000,000
 - \$1,000,000 or more),
 - (iv) contractual interest rate in groups of not more than one-half per cent together with the prevailing interest rate used for the purpose of valuing the mortgage; and
 - (e) in summary form, where real estate is held in a segregated fund to the extent that more than 15 per cent of the market value of the fund is invested in real estate, an analysis of the real estate portfolio by,
 - (i) location — (i.e., municipality and province),
 - (ii) class — (i.e., whether multiple-family dwelling, commercial and industrial or other),
 - (iii) market value — (i.e., indicate amount —
 - less than \$50,000
 - \$50,000 or more and less than \$250,000
 - \$250,000 or more and less than \$500,000

\$500,000 or more and less than \$1,000,000

\$1,000,000 or more),

- (iv) the name of each independent qualified appraiser who has made an appraisal during the year identifying the property appraised in each case.

8. Section 2, subsections 3(2), (3) and (4), section 4 and section 5 do not apply to group variable insurance contracts.

FORM 1

INFORMATION REQUIRED IN THE INFORMATION FOLDER OF A LIFE INSURANCE COMPANY WITH A FUND

Insurance Act

ITEM 1. Description of the Variable Insurance Contracts:

State briefly the description of the variable insurance contracts offered and describe the material provisions of such contracts, including, without limiting the generality of the foregoing, the following information:

1. The benefits under the contract that are guaranteed and the benefits under the contract that are not guaranteed but fluctuate with the market value of the assets of the fund supporting them.
2. The method of determining the benefits related to the market value of the fund and the amount of the surrender value of those benefits.
3. The percentage of the premium allocated to provide the benefits related to the market value of the fund, when provision is made for part of the premium to be so allocated.
4. Surrender, loan, non-forfeiture or other provisions.
5. The retention charges in the event of surrender of the contract clearly stated and expressed in dollars and cents or as a percentage of premiums, as of the end of each of the first, second and fifth year that the contract is in effect.

Instructions:

- A. This item shall be set forth as the first item in the information folder, except that item 4 and other related information thereto may precede this item and the required information in paragraphs 2 to 5 should be given by type and cross reference to the appropriate places in the information folder.
- B. With respect to paragraphs 3 and 5, tabular illustrations may be used.

- C. With respect to item 5, retention charges may be shown as of the end of other and later years that the contract is in effect in order to better illustrate the effect and term of the contract.

ITEM 2. Value of Units:

1. Describe briefly the method followed or to be followed in determining the value of units to be credited to the contract or surrendered under the contract or to measure the benefits under the contract.

Instruction:

State the frequency with which units are valued, the time when such value becomes effective and the length of time it remains in effect.

2. Describe the basis for establishing the value of the fund.
3. Describe the charges or method of determining the charges, against the fund for taxes, management, or any other expenses or charges on the basis actually charged and on an annual basis.

Instructions:

- A. Indicate briefly any additional charge imposed for the crediting of units to variable insurance contracts, for the transfer of units in one fund for units in another, or the reinvestment of dividends and similar distributions.
 - B. The charges include all service charges against the fund including charges relating to such matters as cost of establishment of a variable insurance contract and the cost of the continuing administration and maintenance of such contract.
 - C. When giving particulars of the charges against the fund with respect to a variable insurance contract, indicate when the charges will be deducted.
4. Describe briefly any provision in the insurer's by-law, resolution, charter or in any agreement or other instrument which specifically authorizes or requires reinvestment of the proceeds of investment dividends or similar distribution in units to be credited to the contract.
 5. Explain how the contract holder is notified of the number of units credited to or variable benefits available under his contract and state how often the contract holder will be notified.

ITEM 3. Method of Marketing:

Outline briefly the method of marketing variable insurance contracts. Give brief details of any contractual arrangements made for this method of marketing.

Instruction:

State whether it is the intention of the insurer to engage in the continuous sale of variable insurance contracts.

ITEM 4. Name and Incorporation of Insurance Company Issuing Contracts:

State the full corporate name of the insurer and the address of its head office and principal office. State the laws under which the insurer was incorporated and whether incorporated by letters patent or otherwise and the date thereof. If material, state whether supplementary letters patent or similar authority for amendment or variation of the letters patent or other constituting document have been issued.

Instructions:

- A. Particulars of any such documents need be set out only if material to the variable insurance contract described in the information folder. See item 12.
- B. Give material details of the form of organization and structure of the insurer.
- C. File with the Superintendent a certified copy of by-law and resolution under which the fund has been established by the insurer indicating the statutory authority for its establishment.

ITEM 5. Restrictions Imposed by Statute and By-law on the Investment Policies of the Insurer with Respect to a Fund:

1. State the statutory limitations on the investments for the fund of the insurer and the amount of the insurer's initial transfer to the fund and source of funds for such transfer.
2. State and describe the investment policy of proposed policy of the insurer as regards the fund with respect to each of the following types of activities outlining the extent, if any, to which the insurer has engaged in such activities during the last five years:
 - i. The borrowing of money.
 - ii. The concentration of investments in a particular class or kind of industry.
 - iii. The purchase and sale of real estate.
 - iv. The making of loans, whether secured or unsecured, exclusive of the purchase of debt securities for investment purposes.
 - v. Transfer of securities between the fund and the insurer.
 - vi. Investment in securities of mutual funds.
 - vii. Any other policy which the insurer deems fundamental.

3. In the case of investments in mortgages or real estate the investment policy shall state in addition to the statement required under paragraph 2,
- i. that no investment shall be made in real estate except in real estate for the production of income,
 - ii. that no investment in real estate shall be made where the investment would result in the market value of the real estate exceeding 50 per cent of the net assets of the fund,
 - iii. that no investment shall be made in any one mortgage or parcel of real estate to an extent of more than 5 per cent of the market value of the assets of the segregated fund at the time of making the investments, except that where an amount is transferred by an insurer from an insurance fund to establish a segregated fund no more than 25 per cent of the amount so transferred shall be invested in any one mortgage or parcel of real estate,
 - iv. where a segregated fund is invested in either mortgages or real estate for the production of income in excess of 30 per cent of the market value of the fund, that the percentage or amount of the total market value of the assets of the fund held in cash or readily marketable securities is not less than the percentage or amount shown in column 2 of the following Table set out opposite the total market value shown in column 1 of the following Table, provided that no further investment is made in mortgage or real estate which would result in the aggregate market value of cash and readily marketable securities being reduced below the appropriate required minimum percentage or amount shown in column 2 of the following Table:

TABLE

Column 1	Column 2
Less than \$1,000,000	25%
\$1,000,000 or more and less than \$2,000,000	20% or \$250,000, whichever is greater
\$2,000,000 or more and less than \$5,000,000	15% or \$400,000, whichever is greater
\$5,000,000 or more	10% or \$750,000, whichever is greater

4. Except for a mortgage which is an approved or insured loan under the *National Housing Act* (Canada), which shall then be transferred at market value, the statement of investment policy shall state that the insurer shall not sell or transfer mortgage or real estate investments from or to a segregated fund of the insurer, to or from another fund of the insurer.

NOTE: A transfer or sale to a segregated fund from another fund of the insurer within sixty days of the first advance under the mortgage or the date of acquisition in the case of real estate shall not be considered as a transfer or sale where there has been no material change in value since the date of the first advance or acquisition.

ITEM 6. Policies with Respect to Investments for the Fund:

State and describe the investment policy of the insurer with respect to each of the following matters that is not described under item 5:

1. State the objectives of the investment policy of the funds.
2. The percentage of assets that it may invest in the securities of any one company.
3. The percentage of securities of any one company that it may acquire.
4. Investment in securities of companies for the purpose of exercising control or management.
5. The application of earnings of the fund.
6. Where more than 15 per cent of the market value of the fund is invested in mortgages or is intended to be invested in mortgages, state the methods by which the market value of the mortgages is determined from time to time, on a basis consistent with the following,
 - i. except that each leasehold mortgage, participation mortgage, mortgage on land only, construction mortgage and mortgage in default of over six months shall be placed in its own category, all mortgages shall be divided into categories of similar risk characteristics,
 - ii. mortgages in each category shall be valued at a principal amount that will produce the prevailing rate of return of new mortgage loans existing for that category of mortgage and for an assumed duration determined with reference to the remaining term to maturity, the period remaining to the date when the mortgage can be repaid and the relationship between the interest rate of the mortgage and the current existing market interest rates for that category of mortgages,
 - iii. in computing the value of a wrap-around mortgage, the wrap-around mortgage and the original mortgage shall each be valued separately in accordance with subparagraph ii and the value of the original mortgage or mortgages shall be deducted from the value of the wrap-around mortgage.

7. Where more than 15 per cent of the market value of the fund is invested in or is intended to be invested in real estate for the production of income, state the methods by which the market value of the real estate is determined, from time to time, on a basis consistent with the following,
- i. the initial market value shall be the cost of acquiring the real estate including professional fees and other acquisition costs,
 - ii. an appraisal of each parcel of real estate shall be made by an independent qualified appraiser at least once every three years,
 - iii. an appraisal of each parcel of real estate shall be made by a qualified appraiser at least once a year and may include an updating of previous appraisals,
 - iv. a monthly market value at dates for which an appraisal is not available shall be determined by the insurer on the basis of the price which the real estate would bring if offered for sale on the open market after allowing a reasonable time to find a willing purchaser buying with knowledge of the use to which the property may be put to reflect changes in real estate prices, construction costs and other economic factors affecting the value of the real estate,
 - v. all appraisals in any one year shall be arranged so that the valuations of the market value of individual parcels of real estate are made at regular intervals over the year,
 - vi. in the event of a material change in the condition of any real estate held in the fund that may affect the market value of the fund, the insurer shall immediately cause an independent appraisal of such real estate to be made and adjust the valuation of the real estate at the next monthly valuation after the appraisal is made.

ITEM 7. Diversification of Assets in the Fund:

Furnish in substantially the tabular form indicated, the following information as at a date within thirty days of the filing of the information folder with respect to each company, 5 per cent or more of whose securities of any class are owned directly or indirectly by the insurer for the fund.

TABLE

Name and Address of Company	Nature of its Principal Business	Percentage of Securities of any Class beneficially owned, directly or indirectly, by insurer in the Fund	Percentage of Book Value of the Fund Assets invested therein
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Instruction:

Where variable insurance contracts with fund units have been issued for a period of twelve months and no material change has occurred in the information required by this item since the date to which the financial statements relating to the fund required for inclusion in the information folder are made up, the information required by this item may be given as of the date to which such financial statements are made up.

ITEM 8. Tax Status of the Fund:

State any taxes that may be imposed on the insurer that would be payable by the insurer from or on behalf of the fund which would constitute a charge upon or deduction from the fund and explain the income tax position of the insurer with respect to its fund.

ITEM 9. Tax Status of Contract Holders:

State in general terms the income tax consequences to those contract holders who hold contracts, the reserve for which is invested in the fund.

ITEM 10. Pending Legal Proceedings:

Briefly describe any legal proceeding material to the insurer and material to contract holders that have or will have units credited to the contract to which the insurer or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the Court or agency in which the proceeding is pending, the date instituted and the principal parties thereto. Make a similar statement as to any such proceeding known to be contemplated.

ITEM 11. Rights of Contract Holders:

State whether a contract holder is a member of the insurer and as such is entitled to any voting rights.

ITEM 12. Custodian of Fund Portfolio of Securities:

State the name, principal business address, and nature of the business of any company holding portfolio securities of the insurer as custodian, the basis upon which such securities are held and the approval given therefor, and the jurisdiction in which the portfolio of securities are physically situate.

ITEM 13. Statement of Functions of Insurer:

1. Given a concise statement of the manner in which the following functions of the insurer with respect to the fund are performed and who is responsible therefor, stating how such functions are co-ordinated and to the extent that any such functions are not performed by employees of the insurer, the names and addresses of the persons, or companies responsible for performing such functions:

- i. Management of the insurer other than management of the fund portfolio.
 - ii. Management of the fund portfolio.
 - iii. Providing investment analysis for the fund portfolio.
 - iv. Providing investment recommendations, for the fund portfolio.
 - v. Making investment decisions for the fund portfolio.
 - vi. Purchase and sale of the investment portfolio and brokerage arrangements relating thereto.
 - vii. Distribution of the variable insurance contracts offered.
2. List the names and addresses in full of all directors and officers of the companies named in answer to paragraph 1 of this item if performed by a company other than the insurer.

Instructions:

1. In giving information regarding the purchase and sale of the investment portfolio and brokerage arrangements relating thereto only the name and address of the principal broker need be given.
2. In giving information regarding purchase and sale of the investment portfolio and brokerage arrangements relating thereto and where a principal broker is involved give brief details of the following matters:
 - i. the total cost during the last completed financial year of the insurer of securities acquired for the fund, distinguishing between,
 - A. securities of or guaranteed by the government of any country, or any political subdivision thereof,
 - B. short-term notes, and
 - C. other securities,
 - ii. the total cost of securities held at the beginning and at the end of the insurer's last completed financial year,
 - iii. the formula, method or criteria used in allocating brokerage business to persons or companies furnishing statistical research or other services to the insurer or the manager of the insurer with respect to the fund, and
 - iv. state the amount of brokerage paid to the principal broker.
3. If one or more persons or companies performs more than one of the functions referred to in this item, so state giving details of all functions so performed.
4. As used in this form,

“brokerage arrangements” or “brokerage business”.—“brokerage arrangements” or “brokerage business” include all purchases and sales of the investment portfolio, whether effected directly or through an agent;

“principal broker”.—“principal broker” includes,

- (a) a person or company through whom the investment portfolio of the insurer is purchased or sold pursuant to a contractual arrangement with the insurer or the manager of the insurer providing for an exclusive right to purchase or sell the investment portfolio of the insurer or any feature which gives or is intended to give a broker or dealer a material competitive advantage over other brokers or dealers in respect of the purchase or sale of the investment portfolio of the insurer,
- (b) a person or company, together with any affiliate by or through whom 15 per cent or more of the aggregate value of securities transactions of the insurer were carried out,
5. With the consent of the Superintendent a person or company who would otherwise be a principal broker may, with respect to any one or more of the items of disclosure required by this Form, be treated as not coming within the definition of a principal broker.

ITEM 14. Relationship to Insurer:

Furnish the following information as to each person or company named in answer to paragraph 1 of item 13:

1. If a named person or company is associated with the insurer or is a director or senior officer of or is associated with any affiliate of the insurer or is a director or senior officer of or is associated with any company which is associated with the insurer, so state and give particulars of the relationship.
2. If a named person or company in paragraph 1 of item 13 has a contract or arrangement with the insurer, give a brief description of the contract or arrangement, including the basis for determining the remuneration of the named person or company and give the amount of remuneration paid or payable by the insurer and its subsidiaries to such person or company during the last completed financial year of the insurer.
3. Where and to the extent required by the Superintendent, give the business experience of each named person or company and in the case of a named company, the directors and officers thereof.

ITEM 15. Principal Participants in the Fund:

Where more than 10 per cent of the net asset value of the fund is attributed to one contract, furnish the following information as of the year end set forth in the financial statements in Forms 2 to 7 inclusive or as of a date specified by the Superintendent in substantially the tabular form indicated:

TABLE

Column 1	Column 2
Type of Contract	Percentage of Net Asset Value of the Fund

ITEM 16. Surrender and Maturity Options:

Give a brief outline of the rights of the contract holder during the term of and at the maturity of the contract including, without limiting the generality of the foregoing, surrender privileges, conversion and other options and any charges with respect thereto.

Instruction:

This information should be stated in plain language without the use of technical terminology.

ITEM 17. Interest of Management and Others in Material Transactions:

Describe briefly and, where practicable, state the approximate amount of any material interest, direct or indirect, of any of the following persons or companies in any transactions within the three years prior to the date of the filing of the information folder, or in any proposed transaction which in either such case has materially affected, or will materially affect, the insurer or any of its subsidiaries with respect to the fund:

1. The principal broker of the insurer.
2. Any director or senior officer of the insurer.
3. Any associate or affiliate of the foregoing persons or companies.

Instructions:

1. Give a brief description of the material transaction. Include the name and address of each person or company whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described.
2. As to any transaction involving the purchase or sale of assets by or to the insurer or any subsidiary, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. This item does not apply to any interest arising from holding a contract of the insurer where the contract holder receives no extra or special benefit or advantage not shared on a proportional basis by all other contract holders who are resident in Canada.
4. No information need be given in answer to this item as to any transaction or any interest therein, where,
 - i. the rates or charges involved in the transaction are fixed by law or determined by competitive bids,
 - ii. the interest of a specified person or company in the transaction is solely that of a director of another company that is a party to the transaction,
 - iii. the transaction involves services as a bank or other depository of funds, trustee under a trust indenture or other similar services,
 - iv. the interest of a specified person or company, including all periodic instalments in the case of any lease or other agreement providing for periodic payments for instalments, does not exceed \$10,000, or
 - v. the transaction does not, directly or indirectly, involve remuneration for less and,
 - A. the interest of a specified person or company arose from the beneficial ownership, direct or indirect, of less than 10 per cent of any class of equity shares of another company that is a party to the transaction, and
 - B. the transaction is in the ordinary course of business of the insurer or its subsidiaries.
5. Information shall be furnished in answer to this item with respect to transactions not excluded above that involve remuneration, directly or indirectly, to any of the specified persons or companies for services in any capacity unless interest of the person or company arises solely from the beneficial ownership, direct or indirect, of less than 10 per cent of any class of equity shares of another company furnishing the services of the insurer or its subsidiaries with respect of the fund.
6. This item does not require the disclosure of any interest in any transaction unless such interest and transaction are material.

ITEM 18. Management Fees and other Expenses:

State the maximum management fees expressed as a percentage of the net assets of the fund and all other expenses which may be charged against the assets of the fund under the contract. Explain how the management fee and other expenses are calculated and to whom they are paid.

Instruction:

The term “other expenses” shall mean all other expenses incurred in the ordinary course of business relating to the organization, management and operation of the fund with the exception of the commissions and brokerage fees on the purchase and sale of portfolio securities and taxes of all kinds to which the fund is or might be subject.

ITEM 19. Material Contracts:

Give particulars of every material contract entered into within two years prior to the date of the filing of the information folder by the insurer or any of its subsidiaries and state a reasonable time and place at which contract, or copy thereof, may be inspected.

The term “material contract” means any contract that can be reasonably regarded as presently material to the proposed contract holder with respect to the fund and not in the ordinary and normal course of business.

ITEM 20. Other Material Facts:

Give particulars of any other material facts relating to the variable insurance contract proposed to be sold and not disclosed pursuant to the foregoing items.

FORM 2

Insurance Act

RECONCILIATION AND
STATEMENT OF CHANGES IN NET ASSETS OF FUND
FOR THE YEAR ENDED, 19 . . .

1. FUND AT BEGINNING OF YEAR	\$
TRANSFERS AND PAYMENTS INTO FUND	\$
2. Premium and reserve allocations	
3. Other deposits	
4. _____	TOTAL _____
TRANSFERS AND PAYMENTS FROM FUND	
5. Annuity, death claims and other benefits	
6. Withdrawals	
7. Transfers to provide fixed benefits	
8. Other (specify)	
9. _____	TOTAL _____

10. Net increase (or decrease) in fund re contract holders' benefits during the year
11. NET BALANCE OF INVESTMENT OPERATIONS AND EXPENSES FOR THE YEAR (Form 3)
12. FUND AT END OF YEAR

FORM 3

Insurance Act

STATEMENT OF INVESTMENT OPERATIONS AND EXPENSES
FOR THE YEAR ENDED, 19...

- INVESTMENT OPERATIONS \$
- Income
1. Investment Income
2. Other Income
- Capital
3. Realized profits (losses) on sale of Investments
4. Increase (decrease) in unrealized appreciation of investments
5. TOTAL
- EXPENSES
6. Management Fees \$
7. Taxes, licences and other fees
8. Other expenses
9. TOTAL
10. Net balance of investment operations and expenses for the year

FORM 4

Insurance Act

STATEMENT OF ASSETS AND LIABILITIES
AS AT, 19...

ASSETS (at market value)

1.	Bonds	\$
2.	Stocks — Preferred	
3.	— Common	
4.	Mortgage Loans	
5.	Real Estate	
6.	Cash and term deposits	
7.	Investment income due and accrued	
8.	Accounts receivable	
9.	
10.	
11.	TOTAL ASSESTS	

LIABILITIES

12.	Amounts due to other funds	\$
13.	Taxes, licences and fees	
14.	Expenses due and accrued	
15.	Investments purchased	
16.	Other liabilities	
17.	
18.	TOTAL AMOUNTS OWING	

INSURANCE FUND

19.	Funds held for benefit of contract holder	\$
20.	Amounts transferred from other funds	
21.	Surplus	
22.	TOTAL FUNDS	
23.	TOTAL FUNDS AND AMOUNTS OWING	

FORM 5

*Insurance Act*FIVE YEAR STATEMENT OF THE FUND AND THE
NUMBER OF CONTRACTS OUTSTANDING

Year ended	Value at End of Year		Number of Contracts outstanding at the end of year	* Distribution During the Year	
	Net Assets	Accumulation Unit		Capital	Dividend Paid
19 ..					
19 ..					
19 ..					
19 ..					
19 ..					

* Use where applicable

FORM 6

Insurance Act

SCHEDULE OF INVESTMENTS YEAR-END HOLDINGS AS AT, 19 ..

A statement containing the following information:

1. The name of each issue of the securities held.
2. The class or designation of each security held.
3. The number of each class of shares or aggregate face value of each class of other securities held.
4. The market value of each class of securities (investments) held and the basis of computation of the market value of each such class.

FORM 7

Insurance Act

STATEMENT OF TRANSACTIONS FOR YEAR ENDED , 19 ..

State the following information with respect to transactions effected in the portfolio of the Fund during the year ended , 19 ..

Each class of Security held (specify class or designation of security as indicated below) *	The aggregate number of securities or the aggregate face value of debt instruments of each class purchased during period and total cost	The aggregate number of securities or the aggregate face value of debt instruments of each class sold during period and proceeds of sale
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	Quantity or Face Value	Cost	Quantity or Face Value	Proceeds

- * 1. Government securities (securities of or guaranteed by the government of any country, or any political subdivision thereof).

2. Short-term notes.
3. Stocks.

4. Bonds.

5. Mortgages on real estate.

6. Other securities.

ONTARIO REGULATION 220/91

ASSESSMENT OF COMMISSION EXPENSES AND EXPENDITURES

O. Reg. 220/91; am. O. Reg. 231/92,
ss. 1-4; O. Reg. 571/94

1. (1) In this Regulation,

“assessment period”.—“assessment period” means the period of time with respect to which the Lieutenant Governor in Council makes an assessment under section 14 of the Act;

“property and casualty insurance”.—“property and casualty insurance” means insurance other than accident, sickness or life insurance.

(2) For the purpose of this Regulation,

(a) an insurer’s net premiums for a class of insurance in a year are the premiums paid to the insurer in the year for that class of insurance, other than premiums for that class of insurance paid to the insurer in the year under agreements for reinsurance; and

(b) an insurer’s direct premiums for a class of insurance in a year are the premiums paid to the insurer in the year for that class of insurance, including premiums for that class of insurance paid to the insurer in the year under agreements for reinsurance, less premiums for that class of immisissie paid by the insurer in the year under agreements for reinsurance.

2. If an insurer is a mutual benefit society, the insurer’s share of an assessment under section 14 of the Act is \$30.

3. Subject to section 4, if an insurer is not a mutual benefit society, the insurer’s share of an assessment under section 14 of the Act in respect of an assessment period shall be determined in accordance with the following rules:

1. Calculate the total amount to be recovered according to the following formula:

$$A = B - C$$

where,

A = the total amount to be recovered,

B = the total of all expenses incurred and expenditures made by the Commission in the conduct of its affairs during the assessment period,

C = the amount paid out of the Motor Vehicle Accident Claims Fund to the Consolidated Revenue Fund during the assessment period under subsection 2(5) of the *Motor Vehicle Accident Claims Act*.

- 1.1 Calculate the expenses incurred and expenditures made by the Commission during the assessment period in respect of automobile insurance, according to the following formula:

$$F = BB + CC + \frac{DD}{2}$$

where,

F = the expenses incurred and expenditures made by the Commission during the assessment period in respect of automobile insurance,

BB = the expenses incurred and expenditures made by the Commission during the assessment period for automobile insurance dispute resolution activity and automobile insurance rates and classification activity,

CC = the expenses incurred and expenditures made by the Commission during the assessment period for the Commission's Accident Benefit Analysis Unit.

DD = the expenses incurred and expenditures made by the Commission during the assessment period for the Commission's Actuarial Services Branch and Market Conduct Branch.

2. Calculate the insurer's automobile insurance share of the assessment, according to the following formula:

$$D = E \times \frac{F - (G \times 1,000) - (EE \times 2,000) - ((H + I) \times 500)}{J}$$

where,

D = the insurer's automobile insurance share of the assessment,

E = the insurer's direct premiums for automobile insurance in Ontario in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period,

F = the expenses incurred and expenditures made by the Commission during the assessment period in respect of automobile insurance, calculated under rule 1.1,

G = the total number of arbitrations commenced under section 282 of the Act during the assessment period and before October 1, 1994,

EE = the total number of arbitrations commenced under section 282 of the Act during the assessment period and after September 30, 1994,

H = the total number of appeals commenced under section 283 of the Act during the assessment period,

I = the total number of applications commenced under section 284 of the Act during the assessment period,

J = the total, for all insurers licensed for automobile insurance during the assessment period, of all direct premiums for automobile insurance in the year beginning on the 1st date of January immediately preceding the beginning of the assessment period.

3. Calculate the amount to be recovered with respect to activities other than automobile insurance, according to the following formula:

$$K = A - F - L$$

where,

K = the amount to be recovered with respect to activities other than automobile insurance,

A = the total amount to be recovered, calculated under rule 1,

F = the expenses incurred and expenditures made by the Commission during the assessment period in respect of automobile insurance, calculated under rule 1.1,

L = the total revenue collected during the assessment period by the Commission or the Treasurer of Ontario under the *Insurance Act*, the *Prepaid Hospital and Medical Services Act* and the *Investment Contracts Act*, other than revenue from an assessment under section 14 of the *Insurance Act* or taxes paid under section 391 of the *Insurance Act*.

4. If the insurer is licensed for property and casualty insurance during the assessment period, calculate the property and casualty insurer assessment rate for insurers incorporated or organized under the laws of foreign jurisdictions, according to the following formula:

$$M = \frac{(0.7 \times K) - (0.0004 \times N)}{N + P}$$

where,

M = the property and casualty insurer assessment rate for insurers incorporated or organized under the laws of foreign jurisdictions,

K = the amount to be recovered with respect to activities other than automobile insurance, calculated under rule 3,

N = the total, for all insurers incorporated or organized under the laws of Ontario, other than mutual benefit societies, that are licensed for property and casualty insurance during the assessment period, of all net premiums for property and casualty insurance in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period,

P = the total, for all insurers incorporated or organized under the laws of foreign jurisdictions that are licensed for property and casualty insurance during the assessment period, of all net premiums for property and casualty insurance in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period.

5. If the insurer is incorporated or organized under the laws of a foreign jurisdiction and is licensed for property and casualty insurance during the assessment period, calculate the insurer's property and casualty insurance share of the assessment according to the following formula:

$$Q = R \times M$$

where,

Q = the insurer's property and casualty insurance share of the assessment,

R = the insurer's net premiums for property and casualty insurance in Ontario in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period,

M = the property and casualty insurer assessment rate for insurers incorporated or organized under the laws of foreign jurisdictions, calculated under rule 4.

6. If the insurer is incorporated or organized under the laws of Ontario and is licensed for property and casualty insurance during the assessment period, calculate the insurer's property and casualty insurance share of the assessment according to the following formula:

$$S = T \times (M + 0.0004)$$

where,

S = the insurer's property and casualty insurance share of the assessment,

T = the insurer's net premiums for property and casualty insurance in Ontario in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period,

M = the property and casualty insurer assessment rate for insurers incorporated or organized under the laws of foreign jurisdictions, calculated under rule 4.

7. If the insurer is licensed for accident, sickness or life insurance during the assessment period, calculate the accident, sickness and life insurer assessment rate for insurers incorporated or organized under the laws of foreign jurisdictions, according to the following formula:

$$U = \frac{(0.3 \times K) - (0.0004 \times V)}{V + W}$$

where,

U = the accident, sickness and life insurer assessment rate for insurers incorporated or organized under the laws of foreign jurisdictions,

K = the amount to be recovered with respect to activities other than automobile insurance, calculated under rule 3,

NFBS-1

the total, for all insurers incorporated or organized under the laws of Ontario, other than mutual benefit societies, that are licensed for accident, sickness or life insurance during the assessment period, of all net premiums for accident, sickness and life insurance in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period,

W = the total, for all insurers incorporated or organized under the laws of foreign jurisdictions that are licensed for accident, sickness or life insurance during the assessment period, of all net premiums for accident, sickness and life insurance in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period.

8. If the insurer is incorporated or organized under the laws of a foreign jurisdiction and is licensed for accident, sickness or life insurance during the assessment period, calculate the insurer's accident, sickness and life insurance share of the assessment according to the following formula:

$$X = Y \times U$$

where,

X = the insurer's accident, sickness and life insurance share of the assessment,

Y = the insurer's net premiums for accident, sickness and life insurance in Ontario in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period,

U = the accident, sickness and life insurer assessment rate for insurers incorporated or organized under the laws of foreign jurisdictions, calculated under rule 7.

9. If the insurer is incorporated or organized under the laws of Ontario and is licensed for accident, sickness or life insurance during the assessment period, calculate the insurer's accident, sickness and life insurance share of the assessment according to the following formula:

$$Z = AA \times (U + 0.0004)$$

where,

Z = the insurer's accident, sickness and life insurance share of the assessment,

AA = the insurer's net premiums for accident, sickness and life insurance in Ontario in the year beginning on the 1st day of January immediately preceding the beginning of the assessment period,

U = the accident, sickness and life insurer assessment rate for insurers incorporated or organized under the law of foreign jurisdictions, calculated under rule 7.

10. Calculate the sum of the following amounts that apply to the insurer:
 - i. The insurer's automobile insurance share of the assessment, calculated under rule 2.
 - ii. The insurer's property and casualty insurance share of the assessment, calculated under rule 5 or 6.
 - iii. The insurer's accident, sickness and life insurance share of the assessment, calculated under rule 8 or 9.
11. The insurer's share of the assessment under section 14 of the Act is equal to the greater of the amount calculated under rule 10 and,
 - i. \$1,000, if the insurer is not a fraternal society, or
 - ii. \$100, if the insurer is a fraternal society. O. Reg. 571/94, s. 1.

4. An insurer's share of an assessment calculated under section 3 shall be increased by,

- (a) \$1,000 for each arbitration to which the insurer is a party that is commenced under section 282 of the Act during the assessment period and before October 1, 1994;
 - (a.1) \$2,000 for each arbitration to which the insurer is a party that is commenced under section 282 of the Act during the assessment period and after September 30, 1994;
 - (b) \$500 for each appeal to which the insurer is a party that is commenced under section 283 of the Act during the assessment period; and
 - (c) \$500 for each application to which the insurer is a party that is commenced under section 284 of the Act during the assessment period.
- O. Reg. 571/94, s. 2.

5. Ontario Regulation 386/90 and Ontario Regulation 423/90 are revoked.

ONTARIO REGULATION 776/93

*STATUTORY ACCIDENT BENEFIT SCHEDULE — ACCIDENTS ON OR AFTER JANUARY 1, 1994

O. Reg. 776/93; am O. Reg. 781/94

PART I

INTERPRETATION

Definitions

1. In this Regulation,

“accident”.—“accident” means an incident in which, directly or indirectly, the use or operation of an automobile causes an impairment or causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental device;

“chiropractor”.—“chiropractor” means a person authorized by law to practise chiropractic;

“dentist”.—“dentist” means a person authorized by law to practise dentistry;

“health practitioner”.—“health practitioner”, in respect of a particular impairment, means a physician or,

- (a) a chiropractor, if the impairment is one that a chiropractor is authorized by law to treat,
- (b) a dentist, if the impairment is one that a dentist is authorized by law to treat,
- (c) an optometrist, if the impairment is one that an optometrist is authorized by law to treat,
- (d) a psychologist, if the impairment is one that a psychologist is authorized by law to treat; or
- (e) a physiotherapist, if the impairment is one that a physiotherapist is authorized by law to treat;

“impairment”.—“impairment” means a loss or abnormality of psychological, physiological or anatomical structure or function;

“insured automobile”.—“insured automobile”, in respect of a particular motor vehicle liability policy, means any automobile covered by the policy;

* Ontario Regulation 776/93 replaces R.R.O. 1990, Reg. 672 for accidents occurring on or after January 1, 1994.

“insured person”.—“insured person”, in respect of a particular motor vehicle liability policy, means,

- (a) the named insured, any person specified in the policy as a driver of the insured automobile, the spouse of the named insured, and any dependant of the named insured or spouse, if the named insured, specified driver, spouse or dependant,
 - (i) is involved in an accident in or outside of Ontario that involves the insured automobile or another automobile, or
 - (ii) is not involved in an accident but suffers psychological or mental injury as a result of an accident in or outside of Ontario that results in a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse’s dependant,
- (b) in respect of accidents in Ontario, a person who is involved in an accident involving the insured automobile, or
- (c) in respect of accidents outside Ontario, a person who is an occupant of the insured automobile and who is a resident of Ontario or was a resident of Ontario at some point during the sixty days before the accident;

“member of a health profession”.—“member of a health profession” means a member of a College as defined in the *Regulated Health Professions Act, 1991*;

“optometrist”.—“optometrist” means a person who is authorized by law to practise optometry;

“personal and vocational characteristics”.—“personal and vocational characteristics” include,

- (a) employment history,
- (b) education and training,
- (c) vocational interests and aptitudes,
- (d) vocational skills,
- (e) physical abilities,
- (f) cognitive abilities, and
- (g) language abilities;

“physician”.—“physician” means a person authorized by law to practise medicine;

“physiotherapist”.—“physiotherapist” means a person authorized by law to practise physiotherapy;

“psychologist”.—“psychologist” means a person authorized by law to practise psychology;

“spouse”.—“spouse” means either of a man and a woman who,

- (a) are married to each other,

- (b) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Regulation, or
- (c) have lived together in a conjugal relationship outside marriage at some point during the previous year and have lived together in a conjugal relationship outside marriage,
 - (i) continuously for a period of at least one year, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child or have demonstrated a settled intention to treat a child as a child of their family;

“temporary disability benefits”.—“temporary disability benefits” means,

- (a) benefits paid under Part II, III or IV of this Regulation,
- (b) benefits paid under Part V of this Regulation, unless the benefits are paid more than 104 weeks after the onset of the disability,
- (c) benefits paid under section 32 of this Regulation,
- (d) benefits paid under Part IV of Regulation 672 of the Revised Regulations of Ontario, 1990, unless the benefits have been paid for more than 156 weeks,
- (e) benefits paid under Part II of Subsection 2 of Schedule C to the *Insurance Act* as it existed before June 22, 1990, unless the benefits have been paid for more than 104 weeks,
- (f) benefits paid under section 37, subsection 43(9) or subsection 147(2) of the *Workers' Compensation Act*, or
- (g) any other periodic temporary benefit paid under an income continuation plan or law, other than,
 - (i) unemployment insurance benefits,
 - (ii) benefits paid under Part V of this Regulation more than 104 weeks after the onset of the disability,
 - (iii) benefits paid under Part IV of Regulation 672 of the Revised Regulations in Ontario, 1990 for more than 156 weeks, or
 - (iv) benefits paid under Part II of subsection 2 of Schedule C to the *Insurance Act* as it existed before June 22, 1990 that have been paid for more than 104 weeks. O. Reg. 781/94, s. 1(1), (2).

Partial Inability to Carry on Normal Life

2. For the purpose of this Regulation, a person suffers a partial inability to carry on a normal life as a result of an accident if, and only if, as a result of the accident, the person suffers an impairment that results in a substantial inability to engage in,

- (a) personal care activities in which the person ordinarily engaged before the accident;
- (b) mobility activities in which the person ordinarily engaged before the accident;
- (c) household activities in which the person ordinarily engaged before the accident;
- (d) activities in which the person ordinarily engaged before the accident that require the exercise of cognitive powers;
- (e) activities in which the person ordinarily engaged before the accident that require the ability to control emotions or behaviour; or
- (f) activities in which the person ordinarily engaged before the accident that require communication abilities.

Complete Inability to Carry on Normal Life

3. For the purpose of this Regulation, a person suffers a complete inability to carry on a normal life as a result of an accident if, and only if, as a result of the accident, the person suffers an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident.

Dependants

4. For the purpose of this Regulation, a person is a dependant of another person if the person is principally dependent for financial support or care on the other person or the other person's spouse.

Employment

5. For the purpose of this Regulation, a person is employed if, for salary, wages, other remuneration or profit, the person is engaged in employment, including self-employment, or is the holder of an office, and "employment" has a corresponding meaning.

Payments for Loss of Income

6. For the purpose of this Regulation, payments of severance pay or termination pay are not payments for loss of income.

PART II

INCOME REPLACEMENT BENEFITS

Entitlement to Benefits

7. (1) An insured person who sustains an impairment as a result of an accident is entitled to a weekly income replacement benefit if the insured person meets any of the following qualifications:

1. The insured person was employed at the time of the accident and, as a result of and within two years of the accident, suffers a substantial inability to perform the essential tasks of that employment.
2. The insured person,
 - i. was not employed at the time of the accident,
 - ii. was employed at some point during the 156 weeks before the accident,
 - iii. was sixteen years of age or more or was excused from attendance at school under the *Education Act* at the time of the accident, and
 - iv. as a result of and within two years of the accident, suffers a substantial inability to perform the essential tasks of the employment in which the insured person spent the most time during the time period designated under subsection (2).
3. The insured person,
 - i. was entitled at the time of the accident to start work within one year under a contract of employment that was made before the accident and that was evidenced in writing, and
 - ii. as a result of and within two years of the accident, suffers a substantial inability to perform the essential tasks of the employment he or she was entitled to start under the contract.
4. The insured person,
 - i. was on strike from or was locked out from an employment at the time of the accident or was, at the time of the accident, on a layoff from an employment to which he or she was entitled to be recalled pursuant to a collective agreement, and
 - ii. as a result of and within two years of the accident, suffers a substantial inability to perform the essential tasks of the employment.
5. The insured person,
 - i. received weekly caregiver benefits under Part IV as a result of the accident but is not longer receiving them because there is no person who meets the qualifications set out in subsection 18(5), or would have qualified for weekly caregiver benefits as a result of the accident but for,
 - A. the death as a result of the accident of the person in respect of whom the insured person was the primary caregiver, or
 - B. the operation of subsection 18(3),
 - ii. was employed at some point during the period that began 156 weeks before the person first became a primary caregiver and ended on the day of the accident, and
 - iii. as a result of and within two years of the accident, suffers a substantial

inability to perform the essential tasks of the employment in which the insured person spent the most time during the time period designated under subsection (4).

6. The insured person,

- i. was on pregnancy leave, parental leave or unpaid leave from an employment at the time of the accident, and
- ii. as a result of and within two years of the accident, suffers a substantial inability to perform the essential tasks of the employment.

(2) Subject to subsection (3), a person who applies for benefits under paragraph 1 or 2 of subsection (1) shall designate one of the following time periods:

1. The four weeks before the accident.
2. The fifty-two weeks before the accident.
3. The 156 weeks before the accident.

(3) A person who was self-employed at any time during the four weeks before the accident shall not designate the four-week period under paragraph 1 of subsection (2).

(4) A person who applies for benefits under paragraph 5 of subsection (1) shall designate a period of fifty-two consecutive weeks in the period that began 156 weeks before the person first became a primary caregiver and ended on the day of the accident. O. Reg. 781/94, s. 2(1), (2).

Period of Benefit

8. (1) Subject to subsections (2) to (4), a weekly income replacement benefit under section 7 is payable during the period that the insured person suffers a substantial inability to perform the essential tasks of the employment in respect of which he or she qualifies for the benefit under section 7.

- (2) The insurer is not required to pay a weekly income replacement benefit,
- (a) under paragraph 3 of subsection 7(1), until the day the person would have been entitled under the contract to begin employment;
 - (b) under paragraph 4 of subsection 7(1), until the day the person would have been entitled to return to employment;
 - (c) under paragraph 5 of subsection 7(1), until the day on which there is no person who meets the qualifications set out in subsection 18(5); and
 - (d) under paragraph 6 of subsection 7(1), until the day the person would have returned to employment.

(3) No weekly income replacement benefit is payable under this Part for the first week of the disability.

(4) Subsection (3) does not apply to a weekly income replacement benefit payable under paragraph 5 of subsection 7(1) if the person entitled to the benefit received weekly caregiver benefits under Part IV as a result of the accident.

Gross Annual Income

9. (1) For the purpose of determining the amount of a person's weekly income replacement benefit under paragraph 1 or 2 of subsection 7(1), the person's gross annual income from employment shall be deemed to be the following amount:

1. In the case of a person who designated the four weeks before the accident under paragraph 1 of subsection 7(2), the person's gross income from employment for the four weeks before the accident, multiplied by thirteen.
2. In the case of a person who designated the fifty-two weeks before the accident under paragraph 2 of subsection 7(2), the person's gross income from employment for the fifty-two weeks before the accident.
3. In the case of a person who designated the 156 weeks before the accident under paragraph 3 of subsection 7(2), the person's gross income from employment for the 156 weeks before the accident, divided by three.

(2) For the purpose of subsection (1), a person who,

- (a) is entitled to weekly income replacement benefits under paragraph 1 of subsection 7(1);
- (b) designated the four weeks before the accident under paragraph 1 of subsection 7(2); and
- (c) started the employment in which he or she was engaged at the time of the accident during the four weeks before the accident,

may elect that the person's gross income from employment for the four weeks before the accident be deemed to be the amount determined by taking the person's gross income from employment for the part of the four-week period for which the person earned income from the employment in which he or she was engaged at the time of the accident and extrapolating it over the rest of the four-week period.

(3) For the purpose of subsection (1), a person who,

- (a) is entitled to weekly income replacement benefits under paragraph 1 of subsection 7(1);
- (b) designated the fifty-two weeks before the accident under paragraph 2 of subsection 7(2);
- (c) was self-employed at the time of the accident; and
- (d) started the self-employment in which he or she was engaged at the time of the accident during the fifty-two weeks before the accident,

may elect that the person's gross income from employment for the fifty-two weeks before the accident be deemed to be the amount determined by taking the person's income from the self-employment in which he or she was engaged at the time of the accident for the part of the fifty-two-week period for which the person earned income from that employment and extrapolating it over the rest of the fifty-two-week period.

(4) For the purpose of determining the amount of a person's weekly income replacement benefit under paragraph 5 of subsection 7(1), the person's gross annual income from employment shall be deemed to be the person's gross income from employment for the time period designated under subsection 7(4).

(5) For the purpose of determining the amount of a person's weekly income replacement benefit under paragraph 3, 4 or 6 of subsection 7(1), the person's gross annual income from employment shall be deemed to be the greatest of the following amounts:

1. If the person is qualified under paragraph 3 of subsection 7(1), the gross income payable under the contract of employment, extrapolated to reflect an annual income.
2. If the person is qualified under paragraph 4 of subsection 7(1), the gross income payable in the employment he or she was on strike from, was locked out from or was on a layoff from, extrapolated to reflect an annual income.
3. If the person is qualified under paragraph 6 of subsection 7(1), the gross income payable in the employment he or she was on leave from, extrapolated to reflect an annual income.
4. If the person is also qualified under paragraph 1 or 2 of subsection 7(1), his or her gross annual income as determined under subsections (1) and (2).

(6) A determination under subsection (1) or (4) of the person's gross income from employment for a period of time shall include temporary disability benefits received in respect of that period and benefits received under the *Unemployment Insurance Act* (Canada) in respect of that period.

(7) If a person is entitled to weekly income replacement benefits under paragraph 1 of subsection 7(1) and is not entitled to a benefit under paragraph 4 or 6 of subsection 7(1), a determination under subsection (1) of the person's gross income from employment for a period of time shall be made by taking the person's gross income from employment for the part of that period for which the person earned income from employment and extrapolating it over any part of the period for which the person,

- (a) did not receive temporary disability benefits or benefits under the *Unemployment Insurance Act* (Canada); and
- (b) did not earn any income from employment for one of the following reasons:
 1. The person was not employed.
 2. The person was on a leave of absence without pay.

3. The person was on a layoff from employment.
4. The person was on strike from employment or was locked out from employment.

Amount of Benefit

10. (1) The amount of a weekly income replacement benefit shall be 90 per cent of the insured person's net weekly income from employment determined in accordance with section 81 or 82.

(2) Subject to subsection (3) and section 75, the amount of a weekly income replacement benefit shall not be less than \$185 if, during the week in respect of which the benefit is payable,

- (a) the insured person is suffering a partial or complete inability to carry on a normal life as a result of the accident, if 104 weeks or less have elapsed since the person first qualified for weekly income replacement benefits or weekly caregiver benefits; or
- (b) the insured person is suffering a complete inability to carry on a normal life as a result of the accident, if more than 104 weeks have elapsed since the person first qualified for weekly income replacement benefits or weekly caregiver benefits.

(3) The insurer may deduct from the amount of the weekly income replacement benefits payable to an insured person a percentage of the net income received by the insured person in respect of any employment subsequent to the accident.

(4) The percentage mentioned in subsection (3) shall be,

- (a) 75 per cent, if the insured person started the employment more than twenty-six weeks after the onset of the disability in respect of which the weekly income replacement benefits are paid and has been engaged in the employment for less than twenty-six weeks; and
- (b) 90 per cent, in any other case.

(5) Subject to section 82, for the purpose of subsection (3), the net income received by a person in respect of an employment subsequent to the accident shall be determined by subtracting the following amounts from the gross income received by the person in respect of the employment subsequent to the accident:

1. The premium payable by the person under the *Unemployment Insurance Act* (Canada) on the gross income.
2. The contribution payable by the person under the *Canada Pension Plan* on the gross income.
3. The income tax payable by the person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) on the gross income.

(6) For the purpose of subsection (3), net income from self-employment for a person who was self-employed at the time of the accident shall be determined without making any deductions for,

- (a) expenses that were not reasonable or necessary to prevent a loss of revenue;
- (b) salary expenses that were paid to replace the person's active participation in the business, except to the extent that those expenses were reasonable for that purpose; and
- (c) non-salary expenses that were different in nature or greater than the non-salary expenses incurred before the accident, except to the extent that those expenses were necessary to prevent or reduce any losses resulting from the accident.

(7) If the insured person was self-employed at the time of the accident and the person incurs losses from self-employment as a result of the accident, the insurer shall add to the amount of the weekly income replacement benefits payable to the person 90 per cent of the losses from self-employment incurred as a result of the accident.

(8) For the purpose of subsection (7), losses from self-employment shall be determined in the same manner as losses from the business in which the person was self-employed would be determined under subsection 9(2) of the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario), without making any deductions for,

- (a) expenses that were not reasonable or necessary to prevent a loss of revenue;
- (b) salary expenses that were paid to replace the person's active participation in the business, except to the extent that those expenses were reasonable for that purpose;
- (c) non-salary expenses that were different in nature or greater than the non-salary expenses incurred before the accident, except to the extent that those expenses were necessary to prevent or reduce any losses resulting from the accident;
- (d) expenses that are eligible for capital cost allowance or an allowance on eligible capital property; or
- (e) losses deductible under section 111 of the *Income Tax Act* (Canada).

(9) The weekly amount paid to a person under this Part shall not exceed \$1,000 after making any deductions permitted by subsection 75(1).

Withdrawal from the Workforce

11. (1) If an insured person who is receiving weekly income replacement benefits under this Part had permanently withdrawn from the workforce at the time of the accident, the insurer may, subject to subsections (2) to (9), stop payment of the benefits.

(2) An insurer that believes it is entitled to stop payment of benefits under subsection (1) shall notify the insured person of its intention to stop payment and the notice shall provide the information contained in subsections (3) and (4).

(3) If the insured person does not dispute the stoppage in payment in accordance with sections 279 to 283 of the *Insurance Act* within thirty days after the notice was given, the insurer may stop paying the benefits.

(4) If the insured person disputes the stoppage in payment in accordance with sections 279 to 283 of the *Insurance Act* within thirty days after the notice was given, the insurer shall continue to pay the benefit until the dispute is resolved.

(5) Subsection (4) does not apply if the insured person notifies the insurer in writing that the person does not wish to receive payments of the benefit pending resolution of the dispute.

(6) If the dispute is the subject of a court proceeding or arbitration proceeding, the insurer has the burden of proving on clear and convincing evidence that the insured person had permanently withdrawn from the workforce at the time of the accident.

(7) When a dispute is resolved and it is determined that the insurer is not entitled to stop payment of the benefit, the insurer shall pay with interest any payments that were withheld under subsection (5).

(8) The interest payable under subsection (7) shall be calculated from the date each payment would have been made in the absence of subsection (5) at the bank rate in effect on the date the first payment was withheld under subsection (5).

(9) In subsection (8), "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

(10) When a dispute is resolved and it is determined that the insurer is entitled to stop payment of the benefit, the insured person shall repay to the insurer the amount of the benefits received under this Part after the notice was given under subsection (2).

Benefits After Age Sixty-Five

12. (1) Subject to subsection (2), no weekly income replacement benefits are payable to a person under this Part after the person attains sixty-five years of age.

(2) If a person who is entitled to weekly income replacement benefits under paragraph 1, 3 or 4 of subsection 7(1) attained sixty-five years of age before the accident, the amount determined under subsection 10(1) during each of the first 208 weeks of the disability in respect of which the benefit is payable shall be deemed to be the amount that would be determined in the absence of this section multiplied by the factor set out in Column 2 of the Table to this subsection opposite the range that includes the number of weeks that the person has suffered from the disability in respect of which the benefit is payable.

TABLE

NUMBER OF WEEKS OF DISABILITY)	FACTOR
Less than 52	1.0

52 or more but less than 104	0.8
104 or more but less than 156	0.6
156 or more but less than 208	0.3

(3) No further income replacement benefits are payable under this Part to a person to whom subsection (2) applies if more than 208 weeks have passed since the onset of the disability in respect of which the benefit is paid.

(4) Subsection 10(2) applies to weekly income replacement benefits paid to a person to whom subsection (2) applies.

(5) Subsections 10(3) to (8) do not apply to weekly income replacement benefits paid to a person to whom subsection (2) applies.

(6) Subsections (1) and (3) do not prevent a person from qualifying for weekly disability benefits under Part V.

Responsibility to Seek Employment

13. (1) An insured person who is entitled to weekly income replacement benefits under this Part shall make reasonable efforts to,

- (a) return to the employment in which he or she engaged at the time of the accident; or
 - (b) obtain employment that satisfies the criteria set out in subsection 30(2).
- (2) Subsection (1) does not apply if,
- (a) employment would be detrimental to the person's treatment or recovery; or
 - (b) the insured person is participating in a vocational rehabilitation program.

(3) If an insured person does not comply with subsection (1), the insurer may notify the person that the insurer intends to reduce the amount of the weekly benefit in accordance with subsection (4) and the notice shall provide the information contained in subsections (4) and (5).

(4) If at least thirty days have elapsed after the insured person received the notice and the person is still not complying with subsection (1), the insurer may, despite subsection 10(2) but subject to subsection (5), deduct from the net weekly income used to determine the amount of the benefit under subsection 10(1) 90 per cent of the net weekly income determined in accordance with section 81 or 82 that the person could earn in an employment that satisfies the criteria set out in subsection 30(2).

(5) If within thirty days after receiving the notice, the insured person disputes the reduction in accordance with sections 279 to 283 of the *Insurance Act* and furnishes the insurer with a certificate from a health practitioner stating that employment would be detrimental to the person's treatment or recovery or that the insured person is participating in a vocational rehabilitation program, the insurer shall continue to pay the benefit without any reduction until the dispute is resolved.

(6) Subsection (3) and (4) do not apply if the insurer is making a reduction under subsection 73(4).

Temporary Return to Employment

14. (1) A person receiving weekly income replacement benefits under this Part may return to or start an employment at any time during the 104 weeks following the onset of the disability in respect of which the benefits are paid without affecting his or her entitlement to resume receiving benefits under this Part if, as a result of the accident, he or she is unable to continue in the employment.

(2) After the 104-week period referred to in subsection (1), a person receiving weekly income replacement benefits under this Part may return to or start an employment for periods of up to ninety days without affecting his or her entitlement to resume receiving benefits under this Part if, as a result of the accident, he or she is unable to continue in the employment.

PART III

EDUCATION DISABILITY BENEFITS

Weekly Benefits

15. (1) An insured person who sustains an impairment as a result of an accident is entitled to a weekly education disability benefit if the insured person meets the following qualifications:

1. The insured person,
 - i. was less than sixteen years of age at the time of the accident,
 - ii. was enrolled on a full-time basis in elementary, secondary or post-secondary education at time of the accident, or
 - iii. completed his or her education less than one year before the accident and was not employed, after completing his or her education and before the accident, in an employment that reflected his or her education and training.
2. The insured person, as a result of and within two years of the accident,
 - i. suffers a substantial inability to continue his or her education, in the case of an insured person who qualifies under subparagraph i or ii of paragraph 1.
 - ii. suffers a substantial inability to engage in employment that reflects his or her education and training, in the case of an insured person who qualifies under subparagraph iii of paragraph 1, or

iii. suffers a partial or complete inability to carry on a normal life, in the case of an insured person who qualifies under subparagraph i, ii or iii of paragraph 1.

(2) Subject to subsections (3) and (4), the weekly education disability benefit is payable during the period that the insured person suffers,

- (a) a substantial inability to continue his or her education, in the case of an insured person who qualifies under subparagraph i of paragraph 2 of subsection (1);
 - (b) a substantial inability to engage in employment that reflects his or her education and training, in the case of an insured person who qualifies under subparagraph ii or paragraph 2 of subsection (1); or
 - (c) a partial or complete inability to carry on a normal life, in the case of an insured person who qualifies under subparagraph iii of paragraph 2 of subsection (1).
- (3) No weekly education disability benefit is payable under this section,
- (a) for any period before the insured person attains sixteen years of age; or
 - (b) for the first week of the disability.

(4) If an insured person qualifies for weekly education disability benefits under subparagraph iii of paragraph 2 of subsection (1) and does not qualify under subparagraph i or ii of paragraph 2 of subsection (1), no weekly education disability benefit is payable under this section more than 104 weeks after the insured person first qualified for weekly education disability benefits unless the insured person is suffering a complete inability to carry on a normal life as a result of the accident.

(5) The amount of a weekly education disability benefit shall be equal to half of the net weekly income determined in accordance with section 81 or 82 using a gross annual income from employment equal to 52 multiplied by the Average Weekly Earnings for Ontario, Industrial Aggregate, for the month of June in the year immediately preceding the year in which the benefit is first payable, as published by Statistics Canada under the authority of the *Statistics Act* (Canada).

(6) The insurer may deduct from the amount of the weekly education disability benefits payable to an insured person under this section a percentage of the net income received by the insured person in respect of any employment subsequent to the accident.

(7) The percentage mentioned in subsection (6) shall be,

- (a) 75 per cent, if the insured person started the employment more than 26 weeks after the onset of the disability in respect of which the weekly education disability benefits are paid and has been engaged in the employment for less than 26 weeks; and
- (b) 90 per cent, in any other case.

(8) Subject to section 82, for the purpose of subsection (6), the net income received by a person in respect of an employment subsequent to the accident shall be determined

by subtracting the following amounts from the gross income received by the person in respect of the employment subsequent to the accident:

1. The premium payable by the person under the *Unemployment Insurance Act* (Canada) on the gross income.
 2. The contribution payable by the person under the *Canada Pension Plan* on the gross income.
 3. The income tax payable by the person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) on the gross income.
- (9) No weekly education disability benefits are payable to a person under this section,
- (a) after the person attains 65 years of age, if the person had not attained that age at the time of the accident; or
 - (b) for more than 104 weeks, if the person had attained 65 years of age at the time of the accident.
- (10) Subsection (9) does not prevent a person from qualifying for weekly disability benefits under Part V. O. Reg. 781/94, s. 3.

Lump Sum Benefits

16. (1) Subject to subsections (2) and (3), an insured person who sustains an impairment as a result of an accident is entitled to a lump sum education disability benefit of,

- (a) \$2,000 for each year of elementary education that the person is unable to attend or successfully complete as a result of the accident
- (b) \$4,000 for each year or, if the person is enrolled in a secondary school organized on a semester basis, \$2,000 for each semester, to a maximum of \$4,000 in any year, of secondary education that the person is unable to attend or successfully complete as a result of the accident; and
- (c) \$8,000 for each year or, if the person is enrolled in a post-secondary educational institution organized on a semester basis, \$4,000 for each semester, to a maximum of \$8,000 in any year, of post-secondary education that the person is unable to attend or successfully complete as a result of the accident.

(2) A person who was sixteen years of age or more at the time of the accident is entitled to lump sum education disability benefits under this section in respect of not more than,

- (a) one year of elementary education;
- (b) one year or, if the person is enrolled in a secondary school organized on a semester basis, two semesters of secondary education; or

- (c) one year or, if the person is enrolled in a post-secondary educational institution organized on a semester basis, two semesters of post-secondary education.

(3) If the accident occurred before the person attained sixteen years of age, only one lump sum education disability benefit is payable under this section after the person attains sixteen years of age.

(4) A lump sum education disability benefit under this section shall be paid at the end of the year or semester in respect of which it is payable.

(5) If a person is unable to attend or successfully complete a year or semester of education as a result of an accident, a determination for the purpose of this section of whether the education was elementary, secondary or post-secondary education shall be made on the assumption that, if the accident had not occurred, the person would have successfully attended and completed all previous years and semesters of education that he or she was unable to attend or successfully complete as a result of the accident.

Temporary Return to Education

17. (1) A person receiving education disability benefits under this Part may return to elementary, secondary or post-secondary education at any time during the 104 weeks following the onset of the disability in respect of which the benefits are paid without affecting his or her entitlement to resume receiving benefits under this Part if, as a result of the accident, he or she is unable to continue in elementary, secondary or post-secondary education.

(2) After the 104-week period referred to in subsection (1), a person receiving education disability benefits under this Part may return to elementary, secondary or post-secondary education for periods of up to ninety days without affecting his or her entitlement to resume receiving benefits under this Part if, as a result of the accident, he or she is unable to continue in elementary, secondary or post-secondary education.

PART IV

CAREGIVER BENEFITS

18. (1) An insured person who sustains an impairment as a result of an accident is entitled to a weekly caregiver benefit if the insured person meets the following qualifications:

1. At the time of the accident, the insured person was residing with a person in respect of whom the insured person was the primary caregiver and the person receiving the care was less than sixteen years of age or required the care because of physical or mental incapacity.
2. The insured person was not employed on a full-time basis and was not self-employed at the time of the accident.
3. As a result of and within two years of the accident, the insured person,
 - i. suffers a substantial inability to engage in the caregiving activities in which he or she engaged at the time of the accident, or
 - ii. suffers a partial or complete inability to carry on a normal life.

(2) Subject to subsections (3) and (4), the weekly caregiver benefit under this section is payable during the period that the insured person suffers,

- (a) a substantial inability to engage in the caregiving activities in which he or she engaged at the time of the accident; or
- (b) a partial or complete inability to carry on a normal life.

(3) No weekly caregiver benefit is payable under this section for the first week of the disability.

(4) If an insured person qualifies for weekly caregiver benefits under subparagraph ii of paragraph 3 of subsection (1) and does not qualify under subparagraph i of paragraph 3 of subsection (1), no weekly caregiver benefit is payable under this section more than 104 weeks after the insured person first qualified for weekly caregiver benefits unless the insured person is suffering a complete inability to carry on a normal life as a result of the accident.

(5) The amount of a weekly caregiver benefit shall be \$250 for the first person who meets the following qualifications, plus \$50 for each additional person who meets the following qualifications:

1. The person resided with the insured person at the time of the accident.
2. The insured person was the primary caregiver in respect of the person at the time of the accident.
3. At the time the benefit is paid, the person,
 - i. is less than sixteen years of age; or

ii. requires care because of physical or mental incapacity.

(6) The insurer may deduct from the amount of the weekly caregiver benefits payable to an insured person under this section a percentage of the net income received by the insured person in respect of any employment subsequent to the accident.

(7) The percentage mentioned in subsection (6) shall be,

(a) 75 per cent, if the insured person started the employment more than 26 weeks after the onset of the disability in respect of which the weekly caregiver benefits are paid and has been engaged in the employment for less than 26 weeks; and

(b) 90 per cent, in any other case.

(8) Subject to section 82, for the purpose of subsection (6), the net income received by a person in respect of an employment subsequent to the accident shall be determined by subtracting the following amounts from the gross income received by the person in respect of the employment subsequent to the accident:

1. The premium payable by the person under the *Unemployment Insurance Act* (Canada) on the gross income.
2. The contribution payable by the person under the *Canada Pension Plan* on the gross income.
3. The income tax payable by the person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) on the gross income. O. Reg. 781/94, s. 4.

PART V

OTHER DISABILITY BENEFITS

19. (1) An insured person who sustains an impairment as a result of an accident is entitled to a weekly disability benefit if the insured person, as a result of and within two years of the accident, suffers a partial or complete inability to carry on a normal life and,

- (a) the insured person never met the qualifications for a benefit under subsection 7(1), 15(1) or 18(1), or under Part VI, in respect of the accident;
- (b) the insured person received weekly income replacement benefits under Part II or weekly education disability benefits under section 15 as a result of the accident and payment of the benefits ceased under section 11 or 12 or subsection 15(9); or
- (c) the insured person received weekly caregiver benefits under Part IV as a result of the accident and there is no longer any person who meets the qualifications set out in subsection 18(5).

(2) Subject to subsection (3), the amount of the weekly disability benefit under this section shall be \$185.

(3) The insurer may deduct from the amount of the weekly disability benefits payable to an insured person under this section a percentage of the net income received by the insured person in respect of any employment subsequent to the accident.

(4) The percentage mentioned in subsection (3) shall be,

(a) 75 per cent, if the insured person started the employment more than twenty-six weeks after the onset of the disability in respect of which the weekly disability benefits are paid and has been engaged in the employment for less than twenty-six weeks; and

(b) 90 per cent, in any other case.

(5) Subject to section 82, for the purpose of subsection (3), the net income received by a person in respect of an employment subsequent to the accident shall be determined by subtracting the following amounts from the gross income received by the person in respect of the employment subsequent to the accident:

1. The premium payable by the person under the *Unemployment Insurance Act* (Canada) on the gross income.

2. The contribution payable by the person under the *Canada Pension Plan* on the gross income.

3. The income tax payable by the person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) on the gross income.

(6) Subject to subsection (7), the weekly disability benefit is payable during the period that the insured person suffers a partial or complete inability to carry on a normal life.

(7) No weekly disability benefit is payable under this section,

(a) for any period before the insured person attains sixteen years of age;

(b) for the first week of the disability; or

(c) more than 104 weeks after the insured person first qualified for weekly disability benefits, weekly income replacement benefits or weekly caregiver benefits, unless the insured person is suffering a complete inability to carry on a normal life as a result of the accident. O. Reg. 781/94, s. 5.

PART VI

LOSS OF EARNING CAPACITY BENEFITS

Entitlement to Benefits

20. (1) An insurer shall pay an insured person weekly loss of earning capacity benefits instead of weekly income replacement benefits under Part II, weekly education

disability benefits under section 15, weekly caregiver benefits under Part IV or weekly disability benefits under Part V if the payment of loss of earning capacity benefits is authorized by this Part.

(2) A weekly loss of earning capacity benefits under this Part is payable during the lifetime of the insured person and is subject to such adjustments in the amount of the benefit as are provided in this Regulation.

Insurer's Offer

21. (1) Subject to subsections (7) to (9), an insurer shall promptly deliver a written offer to an insured person with respect to the payment of weekly loss of earning capacity benefits if one or more of the following circumstances occurs:

1. The insured person qualified for weekly income replacement benefits under Part II and continues to qualify for those benefits 104 weeks after the onset of the disability in respect of which he or she first qualified for those benefits.
2. The insured person qualified for weekly income replacement benefits under Part II, did not qualify for those benefits 104 weeks after the onset of the disability in respect of which he or she first qualified for those benefits, but subsequently becomes entitled to resume receiving weekly income replacement benefits under section 14.
3. The insured person qualified for weekly caregiver benefits under Part IV, subsequently elected under section 61 to receive weekly income replacement benefits under Part II, and 104 weeks after the onset of the disability in respect of which he or she first qualified for weekly caregiver benefits continues to qualify for weekly income replacement benefits.
4. The insured person qualified for weekly education disability benefits under section 15 and, 104 weeks after the onset of the disability in respect of which he or she first qualified for those benefits or on the date the person attains sixteen years of age, whichever occurs later, continues to qualify for weekly education disability benefits.
5. The insured person qualified for weekly education disability benefits under section 15, does not qualify for those benefits 104 weeks after the onset of the disability in respect of which he or she first qualified for those benefits or on the date the person attains sixteen years of age, whichever occurs later, but subsequently becomes entitled to resume receiving weekly education disability benefits under section 17.
6. The insured person qualified for weekly caregiver benefits under Part IV, is unable as a result of the accident to earn what he or she could reasonably have earned at the time of the accident, elects at any time 104 weeks or more after the onset of the disability in respect of which he or she first qualified for weekly caregiver benefits to be governed by this Part instead of Part IV or V and,

- i. continues to qualify for weekly caregiver benefits, or
 - ii. ceases to qualify for weekly caregiver benefits because there is no longer any person who meets the qualifications set out in subsection 18(5).
7. The insured person qualified for weekly disability benefits under Part V, continues to qualify for those benefits 104 weeks after the onset of the disability in respect of which he or she first qualified for those benefits, and,
- i. is unable as a result of the accident to earn what he or she could reasonably have earned at the time of the accident,
 - ii. would have joined or returned to the workforce at some time after the accident, and
 - iii. elects to be governed by this Part instead of Part V.
- (2) If a person qualifies for weekly caregiver benefits under Part IV 104 weeks after the onset of the disability in respect of which he or she first qualified for those benefits, the insurer shall promptly provide the person with notice that he or she may be entitled to make the election referred to in paragraph 6 of subsection (1).
- (3) If a person qualifies for weekly disability benefits under Part V 104 weeks after the onset of the disability in respect of which he or she first qualified for those benefits, the insurer shall promptly provide the person with notice that he or she may be entitled to make the election referred to in paragraph 7 of subsection (1).
- (4) An election under paragraph 6 or 7 of subsection (1) may not be changed.
- (5) An offer under subsection (1) shall specify,
- (a) the insured person's pre-accident earning capacity determined in accordance with section 29;
 - (b) the type of employment that best satisfies the criteria set out in subsection 30(2);
 - (c) the insured person's residual earning capacity determined in accordance with section 30; and
 - (d) the amount of the weekly loss of earning capacity benefit, if any, determined in accordance with section 28.
- (6) The offer shall include a notice that, if the offer is not accepted within forty-five days after its receipt or such longer period to which the insurer and the insured person may agree, the insured person shall be deemed to have rejected the offer in respect of both residual earning capacity and pre-accident earning capacity and the insured person will be required to be assessed under section 27.
- (7) Subsection (1) does not apply if the insured person is sixty-five years of age or older.
- (8) The time for delivering an offer under subsection (1) may be extended by agreement between the insurer and the insured person.

(9) If an insured person suffers an impairment as a result of an accident that occurs after the accident in respect of which an offer would, in the absence of this subsection, be given under subsection (1), and the latter accident results in a disability in respect of which weekly benefits are payable under Part II, section 15, Part IV or Part V, the operation of subsection (1) is delayed until 104 weeks after the latter accident. O. Reg. 776/93, s. 21.

Insured Person's Response to Offer

22. (1) An insured person who receives the insurer's offer under section 21 may give the insurer a written response,

- (a) agreeing to the insurer's offer; or
- (b) rejecting the insurer's offer in respect of the person's pre-accident earning capacity or the person's residual earning capacity, or both.

(2) The rejection of an offer under clause (1)(b) does not prevent the insurer and insured person from entering into negotiations in an effort to enter into an agreement regarding the payment of loss of earning capacity benefits.

(3) Any agreement to pay weekly loss of earning capacity benefits under this Part shall be in writing and shall specify the particulars set out in subsection 21(5).

(4) If the insured person and insurer enter into an agreement under this Part and the payment of loss of earning capacity benefits is authorized under the agreement, the insurer shall begin to pay weekly loss of earning capacity benefits in accordance with the agreement.

Procedure if No Agreement

23. (1) An insured person who does not accept the insurer's offer within forty-five days after receiving it shall be deemed to have rejected the insurer's offer in respect of both residual earning capacity and pre-accident earning capacity.

(2) An insured person who rejects the insurer's offer in respect of residual earning capacity shall be assessed under section 27, and the insurer shall give the person notice of that requirement.

(3) If an insured person rejects the insurer's offer in respect of pre-accident earning capacity, the dispute may be resolved in accordance with sections 279 to 283 of the *Insurance Act*, based on section 29 of this Regulation.

(4) If an insured person rejects the insurer's offer in respect of both pre-accident earning capacity and residual earning capacity, the dispute may be resolved in accordance with sections 279 to 283 of the *Insurance Act*, based on sections 29 and 30 of this Regulation, but no steps shall be taken under sections 279 to 283 of the *Insurance Act*, other than the filing of an application for mediation, pending receipt of the report of the designated assessment centre under section 27.

(5) Subject to subsection (8), if an insured person rejects the insurer's offer in respect of residual earning capacity or both residual earning capacity and pre-accident capacity, the insurer may commence paying weekly loss of earning capacity benefits to the insured person 14 days after receiving the report from the designated assessment centre under subsection 27(5).

(5.1) The benefits paid under subsection (5) shall be based on,

- (a) an insurer's offer made under section 21, in respect of the insured person's pre-accident earning capacity; and
- (b) the determination made by the designated assessment centre of the insured person's gross annual income, in respect of the person's residual earning capacity.

(5.2) Subject to subsection (8), if an insured person rejects the insurer's offer in respect of pre-accident earning capacity but not residual earning capacity, the insurer may, upon receiving the rejection, commence paying weekly loss of earning capacity benefits to the insured person based on the insurer's offer made under section 21.

(6) If, after the centre notifies the insured person under subsection 27(2), no report has been submitted under subsection 27(5) and the centre has informed the insurer that the report has not been submitted because of the insured person's failure to co-operate, the insurer may, on notice to the person and until a report is submitted under subsection 27(5), pay the person weekly loss of earning capacity benefits based on the insurer's offer made under section 21.

(7) By agreement between the insurer and the insured person,

- (a) the forty-five-day period referred to in subsection (1) may be extended;
- (b) the assessment referred to in subsection (2) may be delayed;
- (c) [Revoked O. Reg. 781/94, s. 6(3).]
- (d) [Revoked O. Reg. 781/94, s. 6(3).]

(8) Subject to subsection (6) and to subsection 281(4) of the *Insurance Act*, the insurer shall continue to pay benefits under Part IV or V pending resolution of a dispute under subsection (3) or (4), if the person continues to qualify for those benefits. O. Reg. 781/94, s. 6(1), (2), (4).

Agreement Before Offer

24. A person who has not received an offer under section 21 and who is entitled to receive weekly income replacement benefits under Part II, weekly education disability benefits under section 15, weekly caregiver benefits under Part IV or weekly disability benefits under Part V may agree in writing with the insurer that the insurer will pay the person weekly loss of earning capacity benefits instead of the weekly benefits the person would otherwise be entitled to.

Assessment Before Offer

25. A person who has not received an offer under section 21 and who is entitled to receive weekly income replacement benefits under Part II, weekly education disability benefits under section 15, weekly caregiver benefits under Part IV or weekly disability benefits under Part V may agree in writing with the insurer that the person shall be assessed under section 27.

*Designated Assessment Centres
(Residual Earning Capacity)*

26. (1) The Commissioner of Insurance may, for the purpose of this Part,

- (a) designate assessment centres; and
- (b) specify the types of impairments that each designated assessment centre is authorized to assess.

(2) The accident benefits advisory committee appointed under section 7 of the *Insurance Act* may, for the purpose of this Part, establish procedures, standards and guidelines that shall be used by designated assessment centres in conducting assessments.

Assessment

27. (1) If an insured person agrees to be assessed under section 25 or is required by subsection 23(2) to be assessed under this section, the insurer shall, within fifteen days, notify the designated assessment centre nearest to the insured person that is authorized to assess impairments of the type sustained by the insured person.

(1.1) If, before the assessment has commenced, the designated assessment centre nearest to the insured person has disclosed to the insurer and the insured person that it has a conflict of interest with either of the parties within the meaning of that term in the guidelines established by the accident benefits advisory committee under subsection 38(2),

- (a) the designated assessment centre or another centre shall conduct the assessment, if the parties agree; or
- (b) the designated assessment centre that is next nearest to the residence of the insured person shall conduct the assessment, if the parties do not agree under clause (a).

(2) The centre conducting the assessment shall promptly notify the insured person and shall arrange for the assessment.

(3) For the purpose of the assessment,

- (a) the insured person and the insurer shall provide the centre with information requested by the centre that is reasonably necessary; and

- (b) the insured person shall submit to such reasonable physical, psychological and mental examinations as the centre may request.
 - (4) The centre shall designate the type of employment that best satisfies the criteria set out in subsection 30(2), without considering any impairment that,
 - (a) if the operation of subsection 21(1) was not delayed under subsection 21(9), occurred after the accident and did not result from the accident; or
 - (b) if the operation of subsection 21(1) was delayed under subsection 21(9), occurred after the first accident, unless the impairment resulted from an accident.
 - (5) The centre shall submit a report to the insured person and the insurer that includes,
 - (a) a statement identifying the employment designated by the centre under subsection (4);
 - (b) the centre's determination of the gross annual income that the person could earn from the type of employment designated by the centre under subsection (4);
 - (c) a statement of the centre's reasons for the conclusions referred to in clauses (a) and (b), including,
 - (i) a description of any possible deterioration in the insured person's impairment that the centre had regard to under paragraph 3 of subsection 30(2), and
 - (ii) a description of the insured person's personal and vocational characteristics at the time of the assessment that the centre had regard to under paragraph 3 of subsection 30(2); and
 - (d) copies of any reports made by people who examined the insured person under clause (3)(b).
 - (6) If the centre concludes that there is no employment that complies with the criteria set out in subsection 30(2), the person's residual earning capacity shall be deemed to be zero.
 - (7) The insurer shall pay the fees charged by the centre in respect of the assessment.
- O. Reg. 781/94, s. 7(1), (2).

Amount of Benefit

28. (1) The amount of a weekly loss of earning capacity benefit for an insured person shall be determined in accordance with the following formula:

$$A = 0.90 \times (B - C)$$

where,

A = the amount of the weekly loss of earning capacity benefit,

B = the person's pre-accident earning capacity, determined in accordance with section 29,

C = the person's residual earning capacity, determined in accordance with section 30.

(2) Despite subsection (1), the amount of a weekly loss of earning capacity benefit for an insured person who has received weekly education disability benefits under section 15 shall be the amount determined in accordance with the following formula:

$$A = B - (0.90 \times C)$$

where,

A = the amount of the weekly loss of earning capacity benefit,

B = the person's pre-accident earning capacity, determined in accordance with section 29,

C = the person's residual earning capacity, determined in accordance with section 30.

(3) Subject to section 75, the amount of a weekly loss of earning capacity benefit shall not be less than \$185 if, during the week in respect of which the benefit is payable, the insured person is suffering a complete inability to carry on a normal life as a result of the accident.

(4) The weekly amount paid to a person under this Part shall not exceed \$1,000 after making any deductions permitted by subsection 75(1).

Determining Pre-Accident Earning Capacity

29. (1) For the purpose of determining the amount of a weekly loss of earning capacity benefit under this Part, the pre-accident earning capacity of a person who is entitled to received weekly income replacement benefits under paragraph 1, 3, 4 or 6 of subsection 7(1) shall be deemed to be the person's net weekly income from employment used in section 10 in determining the amount of weekly income replacement benefits immediately before payment of the weekly loss of earning capacity benefits begins, converted to a full-time net weekly income in accordance with section 86, if section 86 applies.

(2) Despite subsection (1), the pre-accident earning capacity of a person who is entitled to receive weekly income replacement benefits under paragraph 1 of subsection 7(1) and who was self-employed at the time of the accident shall be the net weekly income determined in accordance with section 81 or 82 using the gross annual income from employment that the person could reasonably have earned at the time of the accident, having regard to the person's personal and vocational characteristics at that time.

(3) For the purpose of determining the amount of a weekly loss of earning capacity benefit under this Part, the pre-accident earning capacity of a person who is entitled to

receive weekly income replacement benefits under paragraph 2 or 5 of subsection 7(1), weekly caregiver benefits under Part IV or weekly disability benefits under Part V shall be deemed to be the person's net weekly income determined in accordance with section 81 or 82 using the gross annual income from employment that the person could reasonably have earned at the time of the accident, having regard to the person's personal and vocational characteristics at that time.

(4) The amount of a person's pre-accident earning capacity determined under subsections (1), (2) and (3) shall not be less than,

- (a) the net weekly income determined in accordance with section 81 or 82 using a gross annual income from employment equal to the person's gross income from employment, including any temporary disability benefits and any benefits received under the *Unemployment Insurance Act* (Canada), for a period specified by the person of fifty-two consecutive weeks in the 156-week period before the accident, in the case of a person entitled to receive weekly income replacement benefits under paragraphs 1, 2, 3, 4 or 6 of subsection 7(1), or a person who was self-employed at the time of the accident; or
- (b) the net weekly income determined in accordance with section 81 or 82 using a gross annual income from employment equal to the person's gross income from employment, including any temporary disability benefits and any benefits received under the *Unemployment Insurance Act* (Canada), for a period specified by the person of fifty-two consecutive weeks in the period that began 156 weeks before the person first became a primary caregiver and ended on the day of the accident, in the case of a person who is entitled to receive weekly income benefits under paragraph 5 of subsection 7(1) or weekly caregiver benefits under Part IV.

(5) For the purpose of determining the amount of a weekly loss of earning capacity benefit under this Part, the pre-accident earning capacity of a person who is entitled to weekly education disability benefits under section 15 shall be determined in accordance with the following formula:

$$B = D \times E$$

where,

B = the pre-accident earning capacity,

D = the factor in the Table to this subsection set out opposite the range that includes the age the person has attained at the time the weekly loss of earning capacity benefit is to be paid.

E = the net weekly income determined in accordance with section 81 or 82 using a gross annual income from employment equal to 52 multiplied by the Average Weekly Earnings for Ontario, Industrial Aggregate, for the month of June in the year immediately preceding the year in which the determination of pre-accident earning capacity is first made under this

section, as published by Statistics Canada under the authority of the *Statistics Act* (Canada).

TABLE

AGE RANGE (YEARS)	FACTOR
16 or over but under 18	0.55
18 or over but under 20	0.60
20 or over but under 22	0.65
22 or over but under 24	0.70
24 or over but under 26	0.75
26 or over but under 28	0.80
28 or over but under 30	0.85
30 or over	0.90

(6) For the purpose of subsections (2) and (3), a temporary disability that the person had at the time of the accident shall not be considered in determining the gross annual income from employment that the person could reasonably have earned at that time.

Determining Residual Earning Capacity

30. (1) For the purpose of this Part, the residual earning capacity of a person shall be deemed to be the net weekly income determined in accordance with section 81 or 82 using the gross annual income that the person could earn from the type of employment that best satisfies the criteria set out in subsection (2).

(2) The criteria referred to in subsection (1) are:

1. The person,
 - i. is able and qualified to perform the essential tasks of the employment, or
 - ii. would be able and qualified to perform the essential tasks of the employment if the person had not refused to obtain treatment or participate in rehabilitation that was reasonable, available and necessary to permit the person to engage in the employment.
2. The employment exists in the area in which the person lives and is accessible to the person.
3. It would be reasonable to expect the person to engage in the employment having regard to the possibility of deterioration in the person's impairment and to the person's personal and vocational characteristics.

(3) For the purpose of subsection (2), a person is able and qualified to perform the essential tasks of an employment if,

- (a) the person does not have any impairment that permanently prevents the person from performing those tasks; and
- (b) the person has the job skills and any licence or other credentials required to perform those tasks, or could obtain those skills and the licence or credentials without significant effort.

Termination of Other Benefits

31. No weekly income replacement benefits are payable to a person under Part II, no weekly education disability benefits are payable to a person under section 15, no weekly caregiver benefits are payable to a person under Part IV and no weekly disability benefits are payable to a person under Part V,

- (a) after loss of earning capacity benefits begin to be paid to the person under this Part; or
- (b) if the amount of the weekly loss of earning capacity benefits payable to the person has been determined in accordance with this Part to be zero.

Temporary Supplement to Benefits

32. (1) If a person who is entitled to receive weekly loss of earning capacity benefits as a result of an accident and who is engaged in an employment becomes unable for a temporary period, as a result of the accident, to engage in employment in which the person could earn the gross annual income that was used to determine the person's residual earning capacity for the purpose of determining the amount of the person's weekly loss of earning capacity benefit, the insurer shall, during that period, pay the person a weekly supplement to the loss of earning capacity benefits.

(2) Subsection (1) applies only if the person provides the insurer with a certificate from a health practitioner stating that the person has become unable for a temporary period, as a result of the accident, to engage in employment in which the person could earn the gross annual income that was used to determine the person's residual earning capacity for the purpose of determining the amount of the person's weekly loss of earning capacity benefit.

(3) Subsection (2) does not prevent the insurer from disputing a claim for a weekly supplement under this section in accordance with sections 279 to 283 of the *Insurance Act*, but the insurer shall pay the weekly supplement pending resolution of the dispute.

(4) Subject to subsections (5) and (6), the amount of the weekly supplement shall be equal to the lesser of the following amounts:

1. 90 per cent of the person's residual earning capacity that was used for the purpose of determining the amount of the person's weekly loss of earning capacity benefit before the temporary period.

2. 90 per cent of the net weekly income determined in accordance with section 81 or 82 from the type of employment in which the person is unable to engage during the temporary period.

(5) The sum of the weekly loss of earning capacity benefits and the weekly supplement shall not exceed \$1,000 after making any deductions permitted by section 75.

(6) No supplement shall be paid under this section for a period of more than one year or after the person attains sixty-five years of age.

(7) Subsection (1) applies whether or not the person is engaged in the type of employment that satisfies the criteria set out in subsection 30(2) at the time the determination occurs.

Mandatory Review of Amount of Benefit

33. (1) The insurer shall review the amount of the weekly loss of earning capacity benefit,

- (a) three years after loss of earning capacity benefits are first paid to a person; and
- (b) eight years after loss of earning capacity benefits are first paid to the person.

(2) Subsection (1) does not apply after the person attains sixty-five years of age.

(3) After each review, the insurer shall,

- (a) if the insurer believes there has been no material change in the ability of the person to earn the amount that is being used for the purpose of determining the person's residual earning capacity, offer to continue to pay the person a weekly loss of earning capacity benefit in the same amount as the person's current benefit; or
- (b) in any other case, offer to pay the person a weekly loss of earning capacity benefit in an amount determined under section 28 based on the insurer's estimate of the person's current residual earning capacity determined in accordance with section 30 and specified in the offer.

(4) An offer under this section shall be made in writing and shall include the particulars set out in clauses 21(5)(b) to (d).

(5) Sections 21 to 30 apply, with necessary modifications, for the purpose of adjusting the amount of the weekly loss of earning capacity benefits payable to the person.

Deterioration in Impairment

34. (1) A person receiving weekly loss of earning capacity benefits may require the insurer to review the amount of the benefit if the person provides the insurer with a certificate from a health practitioner stating that the person has suffered a permanent

deterioration in his or her impairment as a result of the accident that makes the person unable to engage in employment in which the person could earn the gross annual income that was used to determine the person's residual earning capacity for the purpose of determining the amount of the person's weekly loss of earning capacity benefit.

(2) Subsection (1) does not apply after the person attains sixty-five years of age.

(3) Subsection (1) applies whether or not the person is engaged in the type of employment that satisfies the criteria set out in subsection 30(2) at the time the deterioration occurs.

(4) Subsection (1) applies only if,

(a) more than one year has elapsed since loss of earning capacity benefits were first paid to the person in respect of the accident and a review is not yet required by clause 33(1)(a);

(b) more than one year has elapsed since the review required by clause 33(1)(a) and a review is not yet required by clause 33(1)(b); or

(c) more than one year has elapsed since the review required by clause 33(1)(b).

(5) No review may be required under subsection (1) within one year after a previous review was made under this section.

(6) Subsections 33(3) to (5) apply, with necessary modifications, to a review required by this section.

Adjustment at Age Sixty-Five

35. (1) When a person who is receiving weekly loss of earning capacity benefits under this Part attains sixty-five years of age, the amount of the weekly loss of earning capacity benefits shall be adjusted to the amount determined in accordance with the following formula:

$$A = B \times 0.02 \times C$$

where,

A = the amount to which the amount of the weekly loss of earning capacity benefits shall be adjusted,

B = the amount of the weekly loss of earning capacity benefit that the person was entitled to receive immediately before attaining sixty-five years of age, without making any deductions permitted by section 75,

C = the lesser of,

i. 35, and

ii. the number of years during which the person qualified for weekly income replacement benefits under Part II, weekly education disability benefits

under section 15, weekly caregiver benefits under Part IV, weekly disability benefits under Part V or weekly loss of earning capacity benefits under this Part before attaining sixty-five years of age.

(2) The amount of a weekly loss of earning capacity benefit that has been adjusted under subsection (1) shall not be less than \$185 if, during the week in respect of which the benefit is payable, the insured person is suffering a complete inability to carry on a normal life as a result of the accident.

PART VII

SUPPLEMENTARY MEDICAL BENEFITS

Entitlement to Benefits

36. (1) If an insured person sustains an impairment as a result of an accident, the insurer shall pay for all reasonable expenses incurred by or on behalf of the insured person as a result of the accident for,

- (a) medical, surgical, dental, optometric, hospital, nursing, ambulance, audiometric and speech-language pathology services;
- (b) chiropractic, psychological, occupational therapy and physiotherapy services;
- (c) medication;
- (d) prescription eyewear;
- (e) dentures and other dental devices;
- (f) hearing aids, wheelchairs or other mobility devices, prostheses, orthotics and other medical devices;
- (g) transportation for the insured person to and from treatment sessions, including transportation for an aide or attendant;
- (h) other goods and services of a medical nature that the insured person requires.

(2) The insurer is not liable to pay any expense under subsection (1) for goods or services that are experimental in nature.

(3) Transportation expenses under clause (1)(g) in respect of an insured person's automobile are limited to expenses for fuel, oil, maintenance, tires and parking.

(4) Subject to subsection (5), clause 39(11)(b) and subsection 39(12), the insurer shall pay an expense under subsection (1) pending resolution of a dispute relating to the expense in accordance with sections 279 to 283 of the *Insurance Act*.

(5) The insurer is not liable to pay more than \$3,000 in respect of an expense under clause (1)(d), (e) or (f) pending the determination of a dispute relating to the expense in accordance with sections 279 to 283 of the *Insurance Act*.

Certificate

37. (1) The insurer may require a person claiming payment of an expense under section 36 to furnish a certificate from the person's health practitioner stating that the expense is reasonable and is necessary for the person's treatment.

(2) In the case of an expense that is of a continuing nature, the insurer may require a certificate to be furnished under subsection (1) as often as reasonably necessary.

*Designated Assessment Centres
(Medical and Rehabilitation)*

38. (1) The Commissioner of Insurance may, for the purpose of this Part,

(a) designate assessment centres; and

(b) specify the types of impairments that each designated assessment centre is authorized to assess.

(2) The accident benefits advisory committee appointed under section 7 of the *Insurance Act* may, for the purpose of this Part, establish procedures, standards and guidelines that shall be used by designated assessment centres in conducting assessments.

Assessment

39. (1) If the insurer receives a certificate under section 37 in respect of an expense, the insurer may give the insured person a notice requiring the insured person to be assessed under this section.

(2) Subsection (1) does not apply to an expense under clause 36(1)(b) or (c) unless,

(a) the expense was incurred more than eight weeks after the accident; or

(b) the insurer has already paid more than \$2,000 for expenses under clauses 36(1)(b) and (c) in respect of the insured person as a result of the accident.

(3) Subsection (1) does not apply to an expense under clause 36(1)(d), (e) or (g).

(4) Subsection (1) does not apply to an expense under clause 36(1)(f) if the Ministry of Health pays part of the cost of the item for which the expense was incurred.

(5) If the insurer gives a notice under subsection (1) and if, within 100 kilometres of the residence of the insured person, there is no designated assessment centre that is authorized to assess impairments of the type sustained by the insured person, the insurer and the insured person shall endeavour to agree on one or more people, at least one of whom shall be a health practitioner, to conduct the assessment.

(6) If there is a designated assessment centre within 100 kilometres of the residence of the insured person or if, within 14 days after the insured person received notice under subsection (1), the insurer and the insured person cannot agree under subsection (5) on

who shall conduct the assessment, the designated assessment centre nearest to the residence of the insured person shall conduct the assessment.

(6.1) If, before the assessment has commenced, the designated assessment centre nearest to the residence of the insured person has disclosed to the insurer and the insured person that it has a conflict of interest with either of the parties within the meaning of that term in the guidelines established by the accident benefits advisory committee under subsection 38(2),

- (a) the designated assessment centre or another centre shall conduct the assessment, if the parties agree; or
 - (b) the designated assessment centre that is next nearest to the residence of the insured person shall conduct the assessment, if the parties do not agree under clause (a).
- (7) If the assessment is required to be conducted by a designated assessment centre,
- (a) the insurer shall, within fifteen days, notify the designated assessment centre; and
 - (b) the centre shall promptly notify the insured person and arrange for the assessment.
- (8) For the purpose of the assessment,
- (a) the insured person and the insurer shall provide the person or persons who conduct the assessment with such information as is reasonably necessary; and
 - (b) the insured person shall submit to such reasonable physical, psychological and mental examinations as are requested by the person or persons who conduct the assessment.

(9) After conducting the assessment, the person or persons who conducted the assessment shall prepare a report and provide a copy of the report to,

- (a) the insurer;
- (b) the insured person; and
- (c) the insured person's health practitioner.

(10) The report shall include,

- (a) a statement of whether, in the opinion of the person or persons who conducted the assessment, the expense claimed is reasonable and is necessary for the insured person's treatment; and
- (b) recommendations relating to the future provisions of goods and services referred to in section 36 to the insured person.

(11) Subject to the determination of a dispute relating to the expense in accordance with sections 279 to 283 of the *Insurance Act*,

- (a) if the report of the assessment states that, in the opinion of the person or persons who conducted the assessment, an expense is reasonable and necessary for the insured person's treatment, the insurer shall pay for the expense;
 - (b) if the report of the assessment does not state that, in the opinion of the person or persons who conducted the assessment, an expense is reasonable and necessary for the insured person's treatment, the insurer is not required to pay for the expense unless clause (c) applies; and
 - (c) if the assessment was conducted in respect of an expense under clause 36(1)(b) or (c) that was incurred within twelve weeks after the accident, the insurer shall pay for the expense.
- (12) The insurer is not required to pay the expense for the period that the insured person does not,
- (a) make himself or herself reasonably available for an assessment under this section; or
 - (b) provide information that is reasonably necessary for an assessment under this section and that the person or persons conducting the assessment have required the insured person to provide. O. Reg. 781/94, s. 8(1), (2).

Payment of Benefits

39.1 (1) Subject to subsection 65(5), an insurer shall mail or deliver a benefit that is payable under this Part to the person entitled within 14 days after the insurer receives an application for the benefit.

(2) An amount payable under this Part is overdue if the insurer fails to comply with subsection (1).

(3) If, before payment becomes overdue under subsection (2), the insurer requires that a certificate be furnished under subsection 37(1) in respect of the benefit,

- (a) subsections (1) and (2) do not apply;
- (b) the insurer shall mail or deliver the benefit to the person entitled within 14 days after the insurer receives the certificate; and
- (c) the amount payable becomes overdue if the insurer fails to comply with clause (b).

(4) If, before payment becomes overdue under clause (3)(b) in respect of an expense under clause 36(1)(a), (b) or (c) for services or medication received outside Canada on an elective basis, or an expense under clause 36(1)(f) for an item for which the Ministry of Health is not paying part of the cost, or an expense under clause 36(1)(h), the insurer requires that an assessment be conducted under section 39,

- (a) subsections (1), (2) and (3) do not apply;
- (b) the insurer shall mail or deliver the payment of the expense to the person entitled

within 14 days after the insurer receives a report under section 39 stating that, in the opinion of the person or persons who conducted the assessment, the expense is reasonable and is necessary for the insured person's treatment; and

- (c) the amount payable becomes overdue if the insurer fails to comply with clause (b).

(5) When a benefit is paid under this Part, the insurer shall provide the insured person with a written explanation of how the amount of the benefit was determined.

(6) If the insurer refuses to pay a benefit under this Part, it shall give the insured person notice of the reasons for the refusal within 14 days after the insurer receives the application or the certificate, if the insurer has required a certificate under subsection 37(1). O. Reg. 781/94, s. 9.

PART VIII

REHABILITATION BENEFITS

Entitlement to Benefits

40. (1) If an insured person sustains an impairment as a result of an accident, the insurer shall pay for reasonable measures,

- (a) to reduce or eliminate the effects of any disability resulting from the impairment; and
- (b) to facilitate the insured person's reintegration into his or her family, the labour market and the rest of society.

(2) The payments required by subsection (1) for the purpose of facilitating the insured person's reintegration into the labour market include payment for vocational rehabilitation measures that are reasonably necessary to enable the person to,

- (a) engage in an employment that is as similar as possible to employment in which he or she engaged before the accident; or
- (b) lead as normal a work life as possible.

(3) In determining what payments are required under subsection (2), regard shall be had to the insured person's personal and vocational characteristics.

(4) The payments required by subsection (1) for the purpose of facilitating the insured person's reintegration into his or her family and the rest of society include payment for social rehabilitation measures that are reasonably necessary to,

- (a) return the insured person as much as possible to the family and social situations in which he or she lived before the accident;

- (b) assist the insured person to adjust to family and social situations as a result of the accident; and
 - (c) maintain the insured person's level of function within the home and family.
- (5) The payments required under this section include payment of all reasonable expenses incurred by or on behalf of the insured person as a result of the accident for a purpose referred to in clause (1)(a) or (b) for,
- (a) social rehabilitation, including life skills training, family counselling, social rehabilitation counselling, financial counselling, home renovations and home devices to accommodate the needs of the insured person, vehicles, vehicle modifications to accommodate the needs of the insured person, and communications aids for the insured person's home;
 - (b) vocational rehabilitation, including employment counselling, vocational assessments, vocational training, academic training, workplace modifications and workplace devices to accommodate the needs of the insured person, and communications aids for the insured person's employment;
 - (c) services provided by a case manager related to the co-ordination of medical, rehabilitation and attendant care services for the insured person;
 - (d) transportation for the insured person to and from counselling sessions, training sessions and assessments, including transportation for an aide or attendant;
 - (e) other goods and services that the insured person requires.
- (6) Transportation expenses under clause (5)(d) in respect of an insured person's automobile are limited to expenses for fuel, oil, maintenance, tires and parking.
- (7) Subject to subsection (8), clause 45(11)(b) and subsection 45(12), the insurer shall pay an expense under subsection (5) pending resolution of a dispute relating to the expense in accordance with sections 279 to 283 of the *Insurance Act*.
- (8) The insurer is not liable to pay an expense under clause (5)(c) pending resolution of a dispute relating to the expense in accordance with sections 279 to 283 of the *Insurance Act* unless the insurer agreed to the appointment of the case manager before the expense was incurred.

Home Modifications

41. (1) If it is more reasonable to purchase a new home to accommodate the needs of an insured person than to renovate the insured person's existing home, the insurer shall contribute to the cost of a new home in an amount equal to the value of the renovations to the existing home that would have been required to accommodate the needs of the insured person.
- (2) Expenses incurred only for the purpose of giving an insured person access to areas of his or her home that are not needed for ordinary living shall be deemed not to be reasonable expenses for the purposes of this Part.

Vehicle Modifications

42. (1) If it is more reasonable to purchase a new vehicle to accommodate the needs of an insured person than to modify an existing vehicle, the insurer shall contribute to the cost of a new vehicle in an amount equal to the cost of the new vehicle, less the trade-in value of the existing vehicle.

(2) Expenses incurred to purchase or modify a vehicle to accommodate the needs of an insured person shall be deemed not to be reasonable expenses for the purposes of this Part if they are incurred within five years after the last expenses incurred for that purpose in respect of the same accident.

Certificate

43. (1) The insurer may require a person claiming payment of an expense under section 40 to furnish one of the following certificates, as selected by the person claiming payment:

1. A certificate from the person's physician stating that the expense is reasonable and is necessary for the person's rehabilitation.
2. A certificate from the person's chiropractor or psychologist stating that the expense is reasonable and is necessary for the person's rehabilitation, if the impairment is one that the chiropractor or psychologist is authorized by law to treat.
3. A certificate from the person's physician or, if the impairment is one that a psychologist, is authorized by law to treat, the person's psychologist, stating that,
 - i. a member of a health profession, other than a physician or psychologist, has expressed in writing the opinion that the expense is reasonable and is necessary for the person's rehabilitation, and
 - ii. the physician or psychologist does not disagree with the opinion.

(2) Subsection (1) does not apply to an expense under clause 40(5)(c) or an expense for a vocational rehabilitation program referred to in subsection 76(4).

(3) If a physician or psychologist signs a certificate under paragraph 3 of subsection (1), he or she shall attach to the certificate the written opinion of the member of the health profession.

(4) In the case of an expense that is of a continuing nature, the insurer may require a certificate to be furnished under subsection (1) as often as reasonably necessary.

*Designated Assessment Centres
(Medical and Rehabilitation)*

44. The assessment centres designated for the purpose of Part VII shall be deemed to have been designated for the purpose of this Part and,

- (a) the Commissioner of Insurance may, for the purpose of this Part, specify the types of impairments that each designated assessment centre is authorized to assess; and
- (b) the accident benefits advisory committee appointed under section 7 of the *Insurance Act* may, for the purpose of this Part, establish procedures, standards and guidelines that shall be used by designated assessment centres in conducting assessments.

Assessment

45. (1) If the insurer receives a certificate under section 43 in respect of an expense, the insurer may give the insured person a notice requiring the insured person to be assessed under this section.

(2) Subsection (1) does not apply to an expense under clause 40(5)(c) or (d) or an expense for a vocational rehabilitation program referred to in subsection 76(4).

(3) If the insurer gives a notice under subsection (1) and if, within 100 kilometres of the residence of the insured person, there is no designated assessment centre that is authorized to assess impairments of the type sustained by the insured person, the insurer and the insured person shall endeavour to agree on one or more people, at least one of whom shall be a health practitioner, to conduct the assessment.

(4) If the assessment is in respect of an expense under clause 40(5)(a) or (e), at least one of the persons agreed on to conduct the assessment shall be a health practitioner.

(5) If the assessment is in respect of an expense under clause 40(5)(b), at least one of the persons agreed on to conduct the assessment shall be a person with expertise in vocational rehabilitation.

(6) If there is a designated assessment centre within 100 kilometres of the residence of the insured person or if, within 14 days after the insured person received notice under subsection (1), the insurer and the insured person cannot agree under subsection (3) on who shall conduct the assessment, the designated assessment centre nearest to the residence of the insured person shall conduct the assessment.

(6.1) If, before the assessment has commenced, the designated assessment centre nearest to the residence of the insured person has disclosed to the insurer and the insured person that it has a conflict of interest with either of the parties within the meaning of that term in the guidelines established by the accident benefits advisory committee under subsection 38(2),

- (a) the designated assessment centre or another centre shall conduct the assessment, if the parties agree; or
 - (b) the designated assessment centre that is next nearest to the residence of the insured person shall conduct the assessment, if the parties do not agree under clause (a).
- (7) If the assessment is required to be conducted by a designated assessment centre,

- (a) the insurer shall, within fifteen days, notify the designated assessment centre; and
 - (b) the centre shall promptly notify the insured person and arrange for the assessment.
- (8) For the purpose of an assessment under this section,
- (a) the insured person and the insurer shall provide the person or persons who conduct the assessment with such information as is reasonably necessary; and
 - (b) the insured person shall submit to such reasonable physical, psychological and mental examinations as are requested by the person or persons who conduct the assessment.
- (9) After conducting the assessment, the person or persons who conducted the assessment shall prepare a report and provide a copy of the report to,
- (a) the insurer;
 - (b) the insured person; and
 - (c) the insured person's health practitioner.
- (10) The report shall include,
- (a) a statement of whether, in the opinion of the person or persons who conducted the assessment, the expense claimed is reasonable and is necessary for the insured person's rehabilitation; and
 - (b) recommendations relating to the future provision of goods and services referred to in section 40 to the insured person.
- (11) Subject to the determination of a dispute relating to the expense in accordance with sections 279 to 283 of the *Insurance Act*,
- (a) if the report of the assessment states that, in the opinion of the person or persons who conducted the assessment, an expense is reasonable and necessary for the insured person's treatment, the insurer shall pay for the expense; and
 - (b) if the report of the assessment does not state that, in the opinion of the person or persons who conducted the assessment, an expense is reasonable and necessary for the insured person's treatment, the insurer is not required to pay for the expense.
- (12) The insurer is not required to pay the expense for the period that the insured person does not,
- (a) make himself or herself reasonably available for an assessment under this section; or
 - (b) provide information that is reasonably necessary for an assessment under this section and that the person or persons conducting the assessment have required the insured person to provide. O. Reg. 781/94, s. 10(1)-(3).

Payment of Benefits

45.1 (1) Subject to subsection 65(5), an insurer shall mail or deliver a benefit that is payable under this Part to the person entitled within 14 days after the insurer receives an application for the benefit.

(2) An amount payable under this Part is overdue if the insurer fails to comply with subsection (1).

(3) If, before payment becomes overdue under subsection (2), the insurer requires that a certificate be furnished under subsection 43(1) in respect of the benefit,

(a) subsections (1) and (2) do not apply;

(b) the insurer shall mail or deliver the benefit to the person entitled within 14 days after the insurer receives the certificate; and

(c) the amount payable becomes overdue if the insurer fails to comply with clause (b).

(4) If, before payment becomes overdue under clause (3)(b) in respect of an expense under section 40, the insurer requires that an assessment be conducted under section 45,

(a) subsections (1), (2) and (3) do not apply;

(b) the insurer shall mail or deliver the payment of the expense to the person entitled within 14 days after the insurer receives a report under section 45 stating that, in the opinion of the person or persons who conducted the assessment, the expense is reasonable and is necessary for the insured person's rehabilitation; and

(c) the amount payable becomes overdue if the insurer fails to comply with clause (b).

(5) When a benefit is paid under this Part, the insurer shall provide the insured person with a written explanation of how the amount of the benefit was determined.

(6) If the insurer refuses to pay a benefit under this Part, it shall give the insured person notice of the reasons for the refusal within 14 days after the insurer receives the application or the certificate, if the insurer has required a certificate under subsection 43(1). O. Reg. 781/94, s. 11.

PART IX**MAXIMUM LIMIT ON SUPPLEMENTARY MEDICAL BENEFITS
AND REHABILITATION BENEFITS**

46. (1) The total of all benefits paid under Parts VII and VIII in respect of an insurer person shall not exceed \$1,000,000 in respect of any one accident.

(2) The maximum limit applicable under subsection (1) shall be the maximum limit that was in effect on the date of the accident, even if the maximum limit has been revised under section 80.

PART X

ATTENDANT CARE BENEFITS

Entitlement to Benefits

47. (1) If an insured person sustains an impairment as a result of an accident, the insurer shall pay for all reasonable expenses incurred by or on behalf of the insured person as a result of the accident for,

- (a) services provided by an aide or attendant; or
- (b) services provided by a long-term care facility, including a nursing home, home for the aged or chronic care hospital.

(2) For the purpose of clause (1)(a), an aide or attendant may be any person who is capable of providing the services, including a family member of the insured person, even if the aide or attendant does not possess any special qualifications.

(3) subsection (1) does not apply to expenses for which payment may be obtained under clause 36(1)(g) or 40(5)(d).

(4) Subject to subsections (5) to (7), the maximum amount payable under this section in respect of an insured person is \$3,000 per month.

(5) If, as a result of the accident, the insured person suffers cervical spinal cord injuries, severe brain injuries or an upper bilateral amputation or other injuries that cause the total loss of use of both hands or arms, the maximum amount payable under this section in respect of the insured person is \$6,000 per month.

(6) If, as a result of the accident, the insured person suffers injuries mentioned in subsection (5) and another injury that by itself would have required services referred to in subsection (1), the maximum amount payable under this section in respect of the insured person is \$10,000 per month.

(7) If, as a result of the accident, the insured person suffers severe brain injuries that cause violent behaviour that may result in physical harm to the insured person or other persons, the maximum amount payable under this section in respect of the insured person is \$10,000 per month.

(8) For the purposes of this section, brain injuries are severe brain injuries only if, within a reasonable period after the accident, the person scored nine points or less on the Glasgow Coma Scale as published in *Management of Head Injuries*, Contemporary Neurology series, Volume 20, (F.A. Davis Company, 1981).

(9) The benefits payable to an insured person under this section shall be determined in accordance with Form 1 and subsection 50(10). O. Reg. 781/94, s. 12(1), (2).

Certificate

48. (1) The insurer may require a person claiming payment of an expense under section 47 to furnish a certificate from a member of a health profession who is authorized by law to treat the person's impairment stating that the expense is reasonable and is necessary for the person's care.

(2) In the case of an expense that is of a continuing nature, the insurer may require a certificate to be furnished under subsection (1) as often as reasonably necessary.

Designated Assessment Centres (Attendant Care)

49. (1) The Commissioner of Insurance may, for the purpose of this Part,

- (a) designate assessment centres; and
- (b) specify the types of impairments that each designated assessment centre is authorized to assess.

(2) The accident benefits advisory committee appointed under section 7 of the *Insurance Act* may, for the purpose of this Part, establish procedures, standards and guidelines that shall be used by designated assessment centres in conducting assessments.

Assessment

50. (1) The insured person may, by written notice to the insurer, elect to be assessed under this section.

(2) The insurer may give the insured person notice requiring the insured person to be assessed under this section.

(3) If more than two years have elapsed since the date of the accident, an insured person shall not be assessed under this section within twelve months of the last assessment under this section.

(4) If the insured person gives a notice under subsection (1) or the insurer gives a notice under subsection (2), the assessment shall be conducted by the designated assessment centre nearest to the residence of the insured person that is authorized to assess impairments of the type sustained by the insured person.

(5) If, before the assessment has commenced, the designated assessment centre nearest to the residence of the insured person has disclosed to the insurer and the insured person that it has a conflict of interest with either of the parties within the meaning of that term in the guidelines established by the accident benefits advisory committee under subsection 38(2),

- (a) the designated assessment centre or another centre shall conduct the assessment, if the parties agree; or
- (b) the designated assessment centre that is next nearest to the residence of the insured person shall conduct the assessment, if the parties do not agree under clause (a).
- (6) If the assessment is required to be conducted by a designated assessment centre,
 - (a) the insurer shall, within fifteen days, notify the designated assessment centre; and
 - (b) the centre shall promptly notify the insured person and arrange for the assessment.
- (7) For the purpose of the assessment,
 - (a) the insured person and the insurer shall provide the person or persons who conduct the assessment with such information as is reasonably necessary; and
 - (b) the insured person shall submit to such reasonable physical, psychological and mental examinations as are requested by the person or persons who conduct the assessment.
- (8) After conducting the assessment, the person or persons who conducted the assessment shall prepare a report in Form 1 and provide a copy of the report to,
 - (a) the insurer;
 - (b) the insured person; and
 - (c) the insured person's health practitioner.
- (9) The report shall include,
 - (a) recommendations relating to the future provision of services referred to in section 47 to the insured person; and
 - (b) a determination of the amount to be paid by the insurer for the future provision of services referred to in section 47 to the insured person.
- (10) The determination under clause (9)(b) shall be made in accordance with Form 1 and shall be based on the following hourly rates for services:
 - 1. For care described in Part I of Form 1, \$8.75 per hour.
 - 2. For care described in Part II of Form 1, the minimum hourly wage established by paragraph 4 of subsection 10(1) of Regulation 325 of the Revised Regulations of Ontario, 1990.
 - 3. For care described in Part III of Form 1, \$14 per hour.
- (11) [Revoked O. Reg. 781/94, s. 13(3).]
- (12) Subject to the determination of a dispute relating to the amount to be paid by the insurer for the provision of services referred to in section 47 to the insured person in

accordance with sections 279 to 283 of the *Insurance Act*, a determination under clause (9)(b) is binding on the insured person and the insurer.

(13) The insurer is not required to pay the expense for the period that the insured person does not,

- (a) make himself or herself reasonably available for an assessment under this section; or
- (b) provide information that is reasonably necessary for an assessment under this section and that the person or persons conducting the assessment have required the insured person to provide. O. Reg. 781/94, s. 13(1), (2), (4).

Payment of Benefits

50.1 (1) Subject to subsection 65(5), an insurer shall mail or deliver a benefit that is payable under this Part to the person entitled within 14 days after the insurer receives an application for the benefit.

(2) An amount payable under this Part is overdue if the insurer fails to comply with subsection (1).

(3) If, before payment becomes overdue under subsection (2), the insurer requires that a certificate be furnished under subsection 48(1) in respect of the benefit,

- (a) subsections (1) and (2) do not apply;
- (b) the insurer shall mail or deliver the benefit to the person entitled within 14 days after the insurer receives the certificate; and
- (c) the amount payable becomes overdue if the insurer fails to comply with clause (b).

(4) When a benefit is paid under this Part, the insurer shall provide the insured person with a written explanation of how the amount of the benefit was determined.

(5) If the insurer refuses to pay a benefit under this Part, it shall give the insured person notice of the reasons for the refusal within 14 days after the insurer receives the application or the certificate, if the insurer has required a certificate under subsection 48(1). O. Reg. 781/94, s. 14.

PART XI

DEATH BENEFITS

51. (1) If an insured person dies as a result of an accident, the insured person is survived by a spouse who was his or her spouse at the time of the accident and,

- (a) the insured person met any of the qualifications set out in subsection 7(1), the

insurer shall pay the spouse an amount equal to the insured person's net weekly income from employment determined in accordance with section 81 or 82 multiplied by 187.2;

- (b) the insured person did not meet any of the qualifications set out in subsection 7(1), the insurer shall pay the spouse \$50,000.

(2) If an insured person dies as a result of an accident, the insured person is survived by one or more dependants who were dependants at the time of the accident and no benefit is payable to a spouse under subsection (1), the insurer shall pay the dependants an amount equal to the amount that would be payable to the spouse under subsection (1) if the insured person had a spouse who was entitled to payment under that subsection.

- (3) If the insured person met any of the qualifications set out in subsection 7(1),

- (a) the insured person's gross annual income shall be deemed for the purpose of subsections (1) and (2) to be the gross annual income that would have been used to determine the amount of the insured person's weekly income replacement benefits under Part II had the insured person survived and been entitled to those benefits; and

- (b) the insured person shall be deemed for the purpose of subsections (1) and (2) to have made the designations and elections referred to in subsections 7(2) and (4) and section 9 that would result in the highest possible benefit under subsection (1) or (2) for the insured person's spouse or dependants.

(4) If an insured person dies as a result of an accident, the insurer shall pay, in addition to any benefit payable under subsection (1) or (2),

- (a) \$10,000 to each person who was a dependant of the insured person at the time of the accident; and

- (b) \$10,000 to each former spouse of the insured person to whom the insured person was obligated at the time of the accident to provide support under a domestic contract or court order.

(5) If an insured person dies as a result of an accident and, at the time of the accident, the insured person was a dependant, the insurer shall pay \$10,000,

- (a) to the person upon whom the insured person was dependent or, if that person is dead or dies within thirty days of the insured person's death, to the surviving spouse of that person if the surviving spouse was the insured person's primary caregiver; or

- (b) to the surviving dependants of the person upon whom the insured person was dependent, if that person is dead and no payment is required by clause (a).

(6) Benefits are payable under subsections (1) to (5) only if the insured person dies within,

- (a) 180 days from the day of the accident unless clause (b) applies; or

(b) 156 weeks from the day of the accident if during that period there has been continuous disability as a result of the accident,

(7) If at the time of the accident the insured person had more than one person entitled to claim as his or her spouse, the payment under subsection (1) shall be divided equally between or among such persons who survive the insured person and who at the time of the death were still spouses of the insured person.

(8) The payment under subsection (1) or (2) shall not be less than \$50,000 and shall not be more than \$200,000.

(9) Payments under subsection (2) or clause (5)(b) shall be paid in equal shares to the surviving dependants.

(10) No amount is payable to a person under this section if the person dies within thirty days of the insured person's death.

(11) The amount of a payment under this section shall be determined as of the date of the insured person's death, even if the amount has been revised under section 80.

(12) A person who conducts an autopsy of the dead person shall provide a copy of his or her report to the insurer and to the person claiming a benefit under this Regulation.

PART XII

FUNERAL BENEFITS

52. (1) The insurer shall pay the funeral expenses incurred in respect of an insured person who dies as a result of an accident.

(2) The maximum amount payable under this section in respect of an insured person is \$6,000.

(3) The maximum amount applicable under subsection (2) shall be the maximum amount that was in effect on the date of the funeral, even if the maximum amount has been revised under section 80.

PART XIII

COMPENSATION FOR OTHER PECUNIARY LOSSES

Expenses of Visitors

53. (1) If an insured person sustains an impairment as a result of an accident, each of the individuals described in subsection (2) is entitled to an allowance that is reasonable

having regard to all of the circumstances for expenses actually incurred in visiting the insured person during his or her treatment or recovery.

(2) The individuals referred to in subsection (1) are,

- (a) the spouse, children, grandchildren, parents, grandparents, brothers and sisters of the insured person;
- (b) an individual who was living with the insured person at the time of the accident;
- (c) an individual who has demonstrated a settled intention to treat the insured person as a child of the individual's family; and
- (c) an individual whom the insured person has demonstrated a settled intention to treat as a child of the insured person's family.

Dependant Care Expenses

54. (1) If an insured person sustains an impairment as a result of an accident, the insurer shall pay for additional expenses reasonably incurred by or on behalf of the insured person in caring for the insured person's dependants as a result of the accident.

(2) Subsection (1) applies only in respect of an insured person who was employed at the time of the accident and who is not receiving weekly caregiver benefits under Part IV.

(3) No benefit is payable under this section after the insured person dies.

(4) Subject to subsection (5), the amount payable under subsection (1) shall not exceed \$75 per week for the first dependant and \$25 per week for each additional dependant.

(5) The total amount payable under this section shall not exceed \$150 per week.

Housekeeping and Home Maintenance Expenses

55. If an insured person sustains an impairment as a result of an accident, the insurer shall pay for additional expenses reasonably incurred by or on behalf of the insured person as a result of the accident for housekeeping and home maintenance services.

Damage to Clothing, Glasses, Hearing Aids, Etc.

56. The insurer shall pay for all reasonable expenses incurred by or on behalf of an insured person in repairing or replacing,

- (a) clothing worn by the insured person at the time of an accident; or
- (b) prescription eyewear, dentures, hearing aids, prostheses, other medical or dental devices, and other personal items belonging to the insured person that are lost or damaged in an accident.

Cost of Examinations

57. (1) The insurer shall pay for all reasonable expenses incurred by or on behalf of an insured person in obtaining and attending an examination or assessment for the purpose of this Regulation or in obtaining a certificate or report for the purpose of this Regulation, including,

- (a) fees charged by a person who conducts an examination or assessment or provides a certificate or report; and
- (b) transportation expenses incurred in attending an examination, including transportation expenses for an aide or attendant.

(2) Transportation expenses under clause (1)(b) in respect of an insured person's automobile are limited to expenses for fuel, oil, maintenance, tires and parking.

PART XIV

EXCLUSIONS

58. (1) The insurer is not required to pay income replacement benefits under Part II, education disability benefits under Part III, disability benefits under Part V or loss of earning capacity benefits under Part VI in respect of a person who was the driver of an automobile at the time of the accident,

- (a) if, as a result of the accident, the driver is convicted of operating the automobile while his or her ability to operate it was impaired by alcohol or a drug, or of driving while his or her blood alcohol level exceeded the limits permitted by law or of an indictable offence related to the operation of the automobile;
- (b) if, as a result of the operation, the driver is asked to provide a breath sample and he or she is convicted for failure to provide the sample;
- (c) if, as a result of the accident, the driver is convicted of operating the automobile while it was not insured under a motor vehicle liability policy;
- (d) if the driver was not authorized by law to drive the automobile;
- (e) if the driver is an excluded driver under the contract of automobile insurance; or
- (f) if the driver knew or ought reasonably to have known that he or she was operating the automobile without the owner's consent.

(2) Clause (1)(d) does not apply to a driver who is not authorized by law to drive an automobile only by reason of a suspension of a licence for failure to pay a fine.

(3) The insurer is not required to pay income replacement benefits under Part II, education disability benefits under Part III, disability benefits under Part V or loss of earning capacity benefits under Part VI,

- (a) in respect of any person who has made, or who knows of, a material misrepresentation that induced the insurer to enter into the contract of automobile insurance or who intentionally failed to notify the insurer of a change in the risk material to the contract; or
- (c) in respect of an occupant of an automobile at the time of the accident who knew or ought reasonably to have known that the driver was operating the automobile without the owner's consent.

(4) Clause (3)(b) does not prevent an excluded driver or any other occupant of an automobile driven by the excluded driver from recovering statutory accident benefits under a motor vehicle liability policy in respect of which the excluded driver or other occupant is a named insured.

PART XV

PROCEDURE

Notice and Application for Benefits

59. (1) A person who wants to apply for benefits under this Regulation shall notify the insurer within thirty days after the circumstances arose that gave rise to the entitlement to benefits, or as soon as practicable thereafter.

(2) The insurer shall promptly provide the person with,

- (a) the appropriate application forms;
- (b) a written explanation of the benefits available under this Regulation; and
- (c) written information to assist the person in applying for benefits, including information to assist the person in making any possible elections.

(3) The person shall submit an application for the benefits to the insurer within ninety days of receiving the application forms.

(4) A failure to comply with a time limit set out in subsection (1) or (3) does not disentitle a person to benefits if the person has a reasonable excuse.

Certificate for Weekly Benefits

60. An insurer may require a person who has applied for or who is receiving weekly benefits under Part II, section 15, Part IV or V to furnish a certificate from a health practitioner of the insured person's choice as to the cause and nature of the impairment, an estimate of the duration of the disability caused by the accident and a treatment plan. O. Reg. 781/94, s. 15.

Election of Weekly Benefits

61. (1) No more than one weekly benefit shall be paid to an insured person under this Regulation for the same period of time.

(2) If it appears from an application for benefits under this Regulation that, in the absence of subsection (1), a person would be entitled to receive more than one weekly benefit under Part II, section 15 and Part IV, the insurer shall notify the person that the person must, within thirty days of receiving the notice, elect which weekly benefit he or she wishes to receive.

(3) Within thirty days of receiving the notice, the person shall elect which weekly benefit he or she wishes to receive.

(4) Pending receipt of the person's election, the insurer shall pay one of the weekly benefits to which the person is entitled and, when the insurer receives the election, the insurer shall adjust the amount of the weekly payments retroactively to the date the person became entitled to the weekly benefits that the person has elected.

(5) If the person does not elect which benefit he or she wishes to receive within the thirty-day period referred to in subsection (3), the person shall be deemed to have elected the highest weekly benefit.

(6) If a person ceases to receive weekly caregiver benefits under Part IV because there is no longer anyone who meets the qualifications set out in subsection 18(5) and the person meets the qualifications set out in paragraph 5 of subsection 7(1), the insured person is entitled to elect to receive weekly income replacement benefits under Part II and the insurer shall notify the person of that entitlement.

(7) Subject to subsection (6), an election under this section may not be changed.

Payment of Weekly Benefits

62. (1) An insurer shall mail or deliver a weekly benefit that is payable under Part II, section 15, Part IV or Part V to the insured person within fourteen days after the insurer receives an application for the benefit.

(2) The insurer shall mail or deliver weekly benefits under Part II, section 15 or Part IV, V or VI to the insured person at least once every second week while the insured person remains entitled to receive the benefits.

(3) Subsection (2) does not apply if the insurer prepays benefits owing.

(4) An amount payable under Part II, section 15 or Part IV, V or VI is overdue if the insurer fails to comply with subsection (1) or (2).

(5) Despite subsection (4), a payment is not overdue if the insurer required that a certificate be furnished under section 60 in respect of the payment and more than six weeks have elapsed without the certificate being furnished.

(6) If subsection (5) applies and the certificate is later furnished, the payment becomes overdue if the amount payable is not mailed or otherwise delivered by the insurer within fourteen days after it received the certificate.

(7) When a weekly benefit is first paid under Part II, section 15, Part IV or Part V or the amount of the weekly benefit is changed, the insurer shall provide the insured person with a written explanation of how the amount of the weekly benefit was determined.

(8) If the insurer refuses to pay weekly benefits under Part II, section 15 or Part IV or V, it shall give the insured person notice of the reasons for the refusal,

- (a) within 14 days after receiving an application for the benefits, if the refusal occurs before the application is approved;
- (b) by the day on which it would have paid the next weekly benefit, if the refusal occurs after the application is approved. O. Reg. 781/94, s. 16.

Designated Assessment Centres (Disability)

63. (1) The Commissioner of Insurance may, for the purpose of this Part,

- (a) designate assessment centres; and
- (b) specify the types of impairments that each designated assessment centre is authorized to assess.

(2) The accident benefits advisory committee appointed under section 7 of the *Insurance Act* may, for the purpose of this Part, establish procedures, standards and guidelines that shall be used by designated assessment centres in conducting assessments.

Stoppage in Weekly Benefits

64. (1) An insurer shall not stop payment of weekly benefits under Part II, section 15 or Part IV or V on the ground that the insured person no longer suffers from the disability as a result of the accident in respect of which the weekly benefits are paid, except in accordance with this section.

(2) The insurer may give notice to the insured person that the insurer will stop paying benefits on a date specified in the notice and the notice shall provide the information contained in subsections (3) to (7) and the reasons for the stoppage in payment.

(3) The insurer may stop payment of the weekly benefits on or after the date specified in the notice unless the insured person gives the insurer written notice that he or she wishes to be assessed in accordance with subsections (5) and (6).

(4) The insurer shall not specify a date for stopping payment under subsection (3) earlier than 14 days after the insured person receives the notice mentioned in subsection (2).

(5) If the insured person gives a notice under subsection (3) and if, within 100 kilometres of the residence of the insured person, there is no designated assessment centre that is authorized to assess impairments of the type sustained by the insured person, the insurer and the insured person shall endeavour to agree on one or more people, at least one of whom shall be a health practitioner, to conduct the assessment.

(6) If there is a designated assessment centre within 100 kilometres of the residence of the insured person or if, within 14 days after the insurer received notice under subsection (3), the insurer and the insured person cannot agree under subsection (5) on who shall conduct the assessment, the designated assessment centre nearest to the residence of the insured person shall conduct the assessment.

(7) If, before the assessment has commenced, the designated assessment centre nearest to the residence of the insured person has disclosed to the insurer and the insured person that it has a conflict of interest with either of the parties within the meaning of that term in the guidelines established by the accident benefits advisory committee under subsection 38(2),

(a) the designated assessment centre or another centre shall conduct the assessment, if the parties agree; or

(b) the designated assessment centre that is next nearest to the residence of the insured person shall conduct the assessment, if the parties do not agree under clause (a).

(8) If a designated assessment centre is required to conduct the assessment,

(a) the insurer shall, within 15 days, notify the designated assessment centre; and

(b) the centre shall promptly notify the insured person and arrange for the assessment.

(9) For the purpose of the assessment,

(a) the insured person and the insurer shall provide the person or persons who conduct the assessment with such information as is reasonably necessary; and

(b) the insured person shall submit to such reasonable, physical, psychological and mental examinations as are requested by the person or persons who conduct the assessment.

(10) After conducting the assessment, the person or persons who conducted the assessment shall prepare a report and provide a copy of the report to the insurer, the insured person and the insured person's health practitioner.

(11) If the report states that the insured person is no longer suffering from a disability resulting from the accident in respect of which the weekly benefits are paid, the insurer may stop paying the benefits.

(12) If the report states that the insured person continues to suffer from a disability resulting from the accident in respect of which the weekly benefits are paid, the insurer

may dispute the obligation to pay benefits in accordance with sections 279 to 293 of the *Insurance Act*, and, pending the resolution of the dispute, the insurer shall pay the benefits.

(13) Nothing in this section prevents an insured person from disputing a stoppage in the payment of weekly benefits in accordance with sections 279 to 283 of the *Insurance Act* and, if it is finally determined that payment of the benefits should not have been stopped, the insurer shall,

- (a) resume payment of the benefits; and
- (b) pay the benefits that are not paid.

(14) If the insured person does not submit to an assessment that he or she requests under subsection (3) or does not comply with the requirements of subsection (9), the insurer may withhold payment of the weekly benefits until the person submits to the assessment or complies with subsection (9) respectively, and when the person submits to the assessment or complies with subsection (9), respectively, the insurer shall,

- (a) resume payment of the benefits; and
- (b) pay the benefits that were not paid if the assessment report determines that benefits should continue to be paid. O. Reg. 781/94, s. 17.

Insurer Examinations

[O. Reg. 781/94, s. 18(1)]

65. (1) An insurer may, for the purpose of any of Parts II to VIII, X and XIII and as often as reasonably necessary, give an insured person notice requiring the person to be examined by one or more persons specified by the insurer, each of whom is a member of a health profession or a person with expertise in vocational rehabilitation.

(2) An examination under subsection (1) shall be scheduled by the insurer and, for that purpose, the insurer shall make reasonable efforts to schedule the examination for a time that is convenient for the insured person and shall provide the insured person with reasonable notice of the examination.

(3) The person or persons who conduct the examination shall prepare a report and provide a copy of the report to the insurer and to the insured person.

(4) A notice referred to in subsection (1) shall state the expense to which the examination relates.

(5) If the insured person fails or refuses to make himself or herself reasonably available for an examination under subsection (1), the insurer is not required to pay for the benefits under section 16 or Part VII, VIII, X or XIII as specified in the notice under subsection (1), until the person submits to the examination.

(5.1) If the insured person fails or refuses to submit to an examination under subsection (1), the insurer may withhold payment of the weekly benefits under Part II, section 15 or Part IV, V or VI until the person submits to the examination and, when the person submits to the examination, the insurer shall,

- (a) resume payment of the benefits; and
- (b) pay the benefits that were not paid. O. Reg. 781/94, s. 18(2), (3).

*Payment of Supplementary Medical Benefits, Rehabilitation Benefits
and Attendant Care Benefits*

[Revoked O. Reg. 781/94, s. 19]

66. [Revoked O. Reg. 781/94, s. 19]

Payment of Certain Benefits

[O. Reg. 781/94, s. 20(1)]

67. (1) Subject to subsection 65(5) an insurer shall mail or deliver a benefit that is payable under section 16 of Part XI, XII or XIII to the person entitled within thirty days after the insurer receives an application for the benefit.

(2) An amount payable under section 16 or Part XI, XII or XIII is overdue if the insurer fails to comply with subsection (1).

(3) When a benefit is paid under section 16 or Part XI, XII or XIII, the insurer shall provide the insured person with a written explanation of how the amount of the benefit was determined.

(4) If the insurer refuses to pay a benefit under section 16 or Part XI, XII or XIII, it shall give the insured person notice of the reasons for the refusal within 30 days after receiving an application for the benefit. O. Reg. 781/94, s. 20(2), (3).

Interest on Overdue Payments

68. If payment of a benefit under this Regulation is overdue, the insurer shall pay interest on the overdue amount for each day the amount is overdue from the date the amount became overdue at the rate of 2 per cent per month compounded monthly.

Prior Approval of Expenses

69. (1) A person may, before an expense referred to in Part VII, VII, X or XIII is incurred, request the insurer to,

- (a) confirm in advance that it will pay for the expense; or
- (b) authorize the person to have the expense billed directly to the insurer, subject to reasonable conditions established by the insurer.

(2) The insurer may refuse the request only if there are reasonable grounds to believe that the expense is one for which the insurer would not be required to pay.

(3) The insurer shall respond to the request,

- (a) within fourteen days after the person who made the request supplies the insurer with the information reasonably required to determine whether the expense is one for which the insurer would be required to pay, in the case of an expense claimed under Part VII, VIII or X; and
 - (b) within thirty days after the person who made the request supplies the insurer with the information reasonably required to determine whether the expense is one for which the insurer would be required to pay, in the case of an expense claimed under Part XIII.
- (4) If the insurer refuses the request, it shall give the person who made the request notice of the reasons for the refusal.

Repayments to Insurer

70. (1) A person shall repay to the insurer any benefit received under this Regulation that is paid to the person through error, wilful misrepresentation or fraud.

(2) The obligation to repay a benefit received under this Regulation that was paid to a person through error does not apply unless notice is given under subsection (5) within twelve months after the payment was made to the person.

(3) A person shall repay to the insurer any benefit received under Part II, III, V or VI that is paid to him or her if the person or the person in respect of whom the payment was made was disqualified from payment under Part XIV.

(4) A person shall repay to the insurer any benefit received under Parts II to VI to the extent of any payments received by the person that are deductible from those benefits under this Regulation.

(5) If a person is required to repay an amount to an insurer under this section, the insurer,

- (a) shall give the person notice of the amount that is required to be repaid; and
- (b) if the person is receiving weekly benefits under this Regulation, may give the person notice that the insurer intends to collect the repayment by deducting up to 20 per cent of the amount of the weekly benefit from each payment of the weekly benefit.

(6) An insurer that has given the notice referred to in clause (5)(b) may collect the repayment by deducting up to 20 per cent of the amount of the weekly benefit from each payment of the weekly benefit.

(7) The insurer may charge interest on an amount repayable under this section from the fifteenth day after the notice is given under the subsection (5) at the bank rate in effect on that day.

(8) In subsection (7), "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

Right to Dispute

71. (1) If an insurer refuses to pay a benefit that a person has applied for under this Regulation or reduces the amount of a benefit that a person received under this Regulation, the insurer shall inform the person in writing of the procedure for resolving disputes relating to benefits under sections 279 to 283 of the *Insurance Act*.

Assessment Before Mediation

71.1 No insured person shall commence a mediation proceeding under section 280 of the *Insurance Act* unless he or she,

- (a) has complied with section 59;
- (b) when required, has submitted to and provided the information required for an assessment under section 23, 25, 39, 45, 50 or 64, as the case may be; and
- (c) has made himself or herself reasonably available for an examination under section 65. O. Reg. 781/94, s. 21.

Time Limit for Proceedings

72. (1) A mediation proceeding under section 280 of the *Insurance Act* or an arbitration or court proceeding under section 281 of the Act in respect of a benefit under this Regulation shall be commenced within two years from the insurer's refusal to pay the amount claimed or, if the person has engaged in an employment as permitted by section 14 or has returned to elementary, secondary or post-secondary education as permitted by section 17, within two years of the insurer's refusal to pay further benefits.

(2) Despite subsection (1), an arbitration or court proceeding under section 281 of the *Insurance Act* may be commenced within ninety days after the mediator reports to the parties under subsection 280(8) of the Act.

PART XVI**RESPONSIBILITY TO OBTAIN TREATMENT
AND PARTICIPATE IN REHABILITATION**

73. (1) A person entitled to weekly income replacement benefits under Part II, weekly education disability benefits under section 15, weekly caregiver benefits under Part IV or weekly disability benefits under Part V shall obtain such treatment and participate in such rehabilitation as is reasonable, available and necessary to,

- (a) permit the person to engage in an employment that satisfies the criteria set out in subsection 30(2), in the case of a person entitled to weekly income replacement benefits under Part II; or

(b) shorten the period during which the weekly benefits are payable, in any other case.

(2) Subsection (1) does not apply if compliance with subsection (1) would be detrimental to the person's treatment or recovery.

(3) If a person refuses to comply with subsection (1), the insurer may notify the person that the insurer intends to reduce the amount of the weekly benefit in accordance with subsection (4) and the notice shall provide the information contained in subsections (4) and (5).

(4) If at least thirty days have elapsed after giving the notice and the person is still refusing to comply with subsection (1), the insurer may, subject to subsection (5), reduce the amount of the weekly benefit by 50 per cent.

(5) If, within thirty days after the notice is given, the person disputes the reduction in accordance with sections 279 to 283 of the *Insurance Act* and provides the insurer with a certificate from a physician or other member of a health profession stating that the person is complying with subsection (1) or that compliance with subsection (1) would be detrimental to the person's treatment or recovery, the insurer shall continue to pay the weekly benefit without any reduction until the dispute is resolved.

(6) Subsection (5) does not apply if an assessment under section 39 of 45 made recommendations that have not yet been implemented unless the certificate under subsection (5) states that the person is complying with subsection (1).

(7) Subsections (3) and (4) do not apply if the insurer is making a deduction under subsection 13(4). O. Reg. 776/93, s. 73.

PART XVII

INTERACTION WITH OTHER SYSTEMS

Social Assistance Payments

74. (1) The insurer shall pay benefits under this Regulation even though the insured person is entitled to, or has received, benefits under an Act administered by the Ministry of Community and Social Services for Ontario or under similar legislation in another jurisdiction.

(2) For the purpose of subsection (1), a service, benefit or entitlement provided under an Act, the administration of which was transferred from the Ministry of Community and Social Services to the Ministry of Health by Order-in-Council, shall be deemed to be provided under an Act administered by the Ministry of Community and Social Services for Ontario so long as the nature of the service, benefit or entitlement remains substantially the same as it was before the transfer.

Collateral Benefits

75. (1) The insurer may deduct the following amounts from the amount payable to an insured person for weekly income replacement benefits under Part II, education disability benefits under section 15, caregiver benefits under Part IV, other disability benefits under Part V or weekly loss of earning capacity benefits under Part VI:

1. Net payments for loss of income that have been received by the insured person as a result of the accident under the laws of any jurisdiction or under any income continuation plan.
2. Net payments for loss of income that have not been received by the insured person but are available to the insured person as a result of the accident under the laws of any jurisdiction or under any income continuation plan, unless the insured person has applied to receive the payments for loss of income.

(2) Despite subsection (1), no deduction shall be made for,

- (a) unemployment insurance benefits that have been received by or are available to the insured person;
- (b) payments under a sick leave plan that have not been received by the insured person but are available to the insured person; or
- (c) payments under a workers' compensation law or plan that have not been received by the insured person and to which the insured person is not entitled because the insured person has elected under the workers' compensation law or plan to bring an action.

(3) Subsection (1) does not apply to,

- (a) weekly income replacement benefits paid to a person to whom subsection 12(2) applies; or
- (b) weekly loss of earning capacity benefits that have been adjusted under subsection 35(1).

(4) The insurer may deduct the following amounts from any weekly income replacement benefits payable to an insured person under Part II, any weekly education disability benefits payable to an insured person under section 15, any weekly caregiver benefits payable to an insured person under Part IV or any weekly disability benefits payable to an insured person under Part V:

1. Any temporary disability benefits being received by the insured person in respect of a period following the accident and in respect of an impairment that occurred before the accident.
2. Any other periodic benefit being received by the insured person in respect of a period following the accident and in respect of an impairment that occurred before the accident, if the insured person was receiving the other periodic

benefits at the time he or she first qualified for the weekly income replacement benefits under Part II, weekly education disability benefits under section 15, weekly caregiver benefits under Part IV or weekly disability benefits under Part V, and, at that time, the other periodic benefit was a temporary disability benefit.

(5) Subsection (4) does not apply to weekly income replacement benefits paid to a person to whom subsection 12(2) applies.

(6) The insurer may deduct the following amounts from the amount of the weekly supplement payable to a person under section 32;

1. Net payments for loss of income that have been received by the insured person as a result of the accident under the laws of any jurisdiction or under any income continuation plan in respect of the employment in which the person is unable to engage during the temporary period, except to the extent that the net payments for loss of income have been deducted under subsection (1) from the amount of the weekly loss of earning capacity benefits payable to the insured person.
2. Net payments for loss of income that have not been received by the insured person but are available to the insured person as a result of the accident under the laws of any jurisdiction or under any income continuation plan in respect of the employment in which the person is unable to engage during the temporary period, unless the insured person has applied to receive the payments for loss of income, except to the extent that the net payments for loss of income have been deducted under subsection (1) from the amount of the weekly loss of earning capacity benefits payable to the insured person.

(7) Despite subsection (6), no deduction shall be made for,

- (a) unemployment insurance benefits that have been received by or are available to the insured person; or
- (b) payments under a sick leave plan that have not been received by the insured person but are available to the insured person.

(8) For the purpose of this section, net payments for loss of income shall be determined by subtracting from the gross amount of payments for loss of income the income tax payable by the person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) on the gross amount of payments for loss of income.

(9) Despite subsection (8), an insurer may elect that all determinations required by this section of net payments for loss of income be made in accordance with the publication of the Ontario Insurance Commission dated November 25, 1993 and entitled "Net Payments for Loss of Income (Collateral Benefits) Table".

(10) Subject to subsection (11), an election under subsection (9) applies to all persons in respect of whom determinations of net payments for loss of income are required by this section.

(11) An election under subsection (9) does not apply to a determination of net payments for loss of income if the gross payments for loss of income exceed \$1,850 per week.

(12) An election under subsection (9) may be revoked.

(13) No payment is required for that portion of an expense referred to in Part VII, VIII, X or XIII that is reasonably available in respect of the insured person under any insurance plan or law or under any other plan or law. O. Reg. 781/94, s. 22.

Workers' Compensation Benefits

76. (1) The insurer is not required to pay benefits under this Regulation in respect of any insured person who, as a result of an accident, is entitled to receive benefits under any workers' compensation law or plan.

(2) Subsection (1) does not apply in respect of an insured person who elects to bring an action referred to in section 10 of the *Workers' Compensation Act* so long as the election is not made primarily for the purpose of claiming benefits under this Regulation.

(3) If a person is entitled to receive benefits under this Regulation as a result of an election made under section 10 of the *Workers' Compensation Act*, no benefits are payable to the person under Part II, III, IV or V in respect of any period of time before the person makes the election.

(4) If a person who would be entitled to benefits under this Regulation in the absence of subsection (1) elects to bring an action referred to in section 10 of the *Workers' Compensation Act* and there is a dispute concerning the insurer's liability to pay an expense for a vocational rehabilitation program that the person was attending at the time of the election and continues to attend, the insurer shall pay the expense pending resolution of the dispute.

(5) Despite subsection (1), if there is a dispute about whether subsection (1) applies to a person, the insurer shall pay full benefits to the person under this Regulation pending resolution of the dispute if,

- (a) the person makes an assignment to the insurer of any benefits under any workers' compensation law or plan to which he or she is or may become entitled as a result of the accident; and
- (b) the administrator or board responsible for the administration of the workers' compensation law or plan approves the assignment.

Accidents in Quebec

77. (1) The insurer shall pay with respect to a person insured in Quebec who dies or who sustains an impairment as a result of an accident in Quebec or who incurs a cost described in section 36 or 40, as the person may elect,

- (a) benefits provided by this Regulation, other than benefits referred to in clause (b); or
- (b) benefits in the same amounts and subject to the same conditions as if the person

was a resident of Quebec (as defined in the *Automobile Insurance Act* (Quebec) and the regulations made under that Act) and was entitled to payments under that Act and those regulations.

(2) A person who elects to claim a benefit as provided in clause (1)(a) is thereafter eligible only for benefits referred to in that clause.

(3) A person who elects to claim a benefit as provided in clause (1)(b) is thereafter ineligible for benefits referred to in clause (1)(a).

(4) For the purpose of this Part, a person is insured in Quebec if the person at the time of the accident,

- (a) was authorized by law to be or to remain in Canada and was living and ordinarily present in Ontario;
- (b) met the criteria prescribed for recovery under the *Automobile Insurance Act* (Quebec);
- (c) was not the owner or driver of, or an occupant of an automobile registered in Quebec; and
- (d) was,
 - (i) an occupant of the insured automobile,
 - (ii) the named insured, his or her spouse or a dependant of either of them while the occupant of any automobile,
 - (iii) a person who was not the occupant of an automobile and was struck by the insured automobile,
 - (iv) the named insured, his or her spouse or a dependant of either of them and was struck by any automobile,
 - (v) if the named insured is a corporation, unincorporated association, partnership or sole proprietorship, a person for whose regular use the insured automobile was supplied, his or her spouse or a dependant of either of them who suffered an impairment,
 - (A) while the occupant of any automobile,
 - (B) by any automobile while not the occupant of the automobile, or
 - (vi) a person struck by an automobile that was driven by a person described in subclause (i), (ii) or (v).

Non-Residents

78. (1) A benefit set out in this Regulation that is paid in respect of a person who was not living and ordinarily present in Ontario at the time of the accident shall, if the benefit is provided under a contract evidenced by a motor vehicle liability policy issued

in Ontario or under the *Motor Vehicle Accident Claims Act*, be reduced by the extent to which the person was at fault or negligent in the accident.

(2) Subsection (1) does not apply to a benefit paid to a person who, at the time of the accident,

- (a) was an occupant of an insured automobile;
- (b) was a named insured under a contract evidenced by a motor vehicle liability policy; or
- (c) was the spouse of a person referred to in clause (b) or a dependant of the person or of his or her spouse.

PART XVIII

INDEXATION

Weekly Benefits

79. (1) Each of the following amounts shall be revised, effective the 1st day of January in every year after 1994, by adjusting the amount by the indexation percentage published under section 268.1 of the *Insurance Act*:

- 1. The net weekly income from employment used to determine the amount of a person's weekly income replacement benefit under Part II.
- 2. The amount of a person's weekly education disability benefit under section 15.
- 3. The amount of a person's weekly caregiver benefit under Part IV.
- 4. The net weekly incomes used to determine the amount of a person's weekly loss of earning capacity benefit under Part VI, if the benefit is payable to a person who is less than sixty-five years of age.
- 5. The amount of a person's weekly loss of earning capacity benefit under Part VI, if the person is sixty-five years of age or more and is not receiving a weekly benefit of \$185 under subsection 35(2).

(2) Subsection (1) does not apply to the amount referred to in paragraph 1 of subsection (1) if the person has been receiving the weekly income replacement benefits for less than one year after the onset of the disability in respect of which the benefits are payable.

- (3) No amount shall be reduced by the operation of subsection (1).

(4) The amount of a weekly loss of earning capacity benefit under Part VI that is payable to a person who is receiving a weekly benefit of \$185 under subsection 28(3) or 35(2) shall be revised to the amount to which it would have been revised under subsection

(1) if subsection 28(3) or 35(2) had never applied to the person, effective the 1st day of January in the year in which, if subsection 28(3) or 35(2) had never applied, the person's weekly benefit would have been revised to an amount greater than \$185.

Monetary Amounts in this Regulation

80. (1) Every monetary amount referred to in this Regulation shall be revised, effective the 1st day of January in every year after 1994, by adjusting the amount by the indexation percentage published under section 268.1 of the *Insurance Act*.

(2) On or before the 1st day of January in every year, the Minister shall publish in *The Ontario Gazette* the amounts to which each monetary amount referred to in this Regulation will be revised by the operation of subsection (1).

(3) subsections (1) and (2) do not apply to the following amounts:

1. The \$185 amount referred to in subsection 10(2).
2. The \$185 amount referred to in subsection 19(2).
3. The \$185 amount referred to in subsection 28(3).
4. The \$185 amount referred to in subsection 35(2).
- 4.1 The \$3,000 amount referred to in subsection 36(5).
- 4.2 The \$2,000 amount referred to in clause 39(2)(b).
- 4.3 The \$1,850 amount referred to in subsection 75(11).
5. The \$185 amount referred to in paragraph 5 of subsection 79(1).
6. The \$185 amounts referred to in subsection 79(4).
7. The \$96,200 amount referred to in clause 82(3)(a).
8. The \$1,850 amount referred to in clause 82(3)(b). O. Reg. 781/94, s. 23.

PART XIX

INCOME CALCULATIONS

Net Weekly Income Formula

81. (1) For the purpose of this Regulation, a person's net weekly income from employment shall be determined in accordance with the following formula:

$$A = \frac{B - C - D - E}{52}$$

where,

- A = the person's net weekly income from employment,
B = the person's gross annual income from employment,
C = the annual premium payable by the person under the *Unemployment Insurance Act* (Canada) on the gross annual income from employment,
D = the annual contribution payable by the person under the *Canada Pension Plan* on the gross annual income from employment,
E = the income tax payable by the person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) on the gross annual income from employment.

(2) For the purpose of subsection (1), the person whose net weekly income from employment is to be determined shall be deemed to be a resident of Ontario.

Net Weekly Income Tables

82. (1) Despite subsections 10(5) and 19(5) and section 81, an insurer may elect that,

- (a) in the case of persons whose income from employment does not include income from self-employment, all determinations required by this Regulation of a person's net weekly income from employment or net income in respect of an employment subsequent to an accident shall be made in accordance with the publication of the Ontario Insurance Commission dated November 25, 1993 and entitled "Net Weekly Income Table—Other than Self-Employment"; and
- (b) in the case of persons whose income from employment consists only of income from self-employment, all determinations required by this Regulation of a person's net weekly income from employment or net income in respect of an employment subsequent to an accident shall be made in accordance with the publication of the Ontario Insurance Commission dated November 25, 1993 and entitled "Net Weekly Income Table — Self-Employment".

(2) Subject to subsection (3), an election under subsection (1) applies to all persons described in subsection (1) in respect of whom determinations of net weekly income from employment and not income in respect of an employment subsequent to an accident are required by this Regulation.

- (3) An election under subsection (1) does not apply to,
 - (a) a determination of net weekly income from employment if the person's gross annual income from employment exceeds \$96,200; or
 - (b) a determination of net income in respect of an employment subsequent to an accident if the gross income received from the employment exceeds \$1,850 per week.
- (4) An election under subsection (1) may be revoked.

Income From Self-Employment

83. For the purpose of this Regulation, a person's income from self-employment shall be determined in the same manner as the person's profit from the business in which the person was self-employed would be determined under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario), but without taking into account,

- (a) expenses that are eligible for capital cost allowance or an allowance on eligible capital property;
- (b) capital gains or losses; or
- (c) losses deductible under section 111 of the *Income Tax Act* (Canada).

Pre-Determined Income From Self-Employment

84. Despite section 83, an insurer and a named insured who is self-employed and not otherwise employed may agree in a contract evidenced by a motor vehicle liability policy that, for the purpose of determining benefits under this Regulation in respect of an accident that occurs during the period covered by the contract, the named insured's gross income from self-employment for every week shall be deemed to be the weekly income amount specified in the contract if, at the time of the accident, the person continues to engage in the self-employment in which he or she engaged at the time the contract was entered into and the person is not otherwise employed.

Income Tax Calculations

85. (1) For the purpose of this Regulation, the income tax payable by a person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) shall be determined having regard to only the following deductions and tax credits that apply to the person under those Acts:

- 1. Alimony and maintenance payments deduction.
- 2. Basic personal tax credit.
- 3. Married person's tax credit or equivalent to married tax credit.
- 4. Age tax credit.
- 5. Disability tax credit.
- 6. Unemployment insurance premium tax credit.
- 7. Canada Pension Plan tax credit.
- 8. Quebec Pension Plan tax credit.

(2) If a determination of the income tax payable by a person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) is necessary to determine the amount of

a benefit under this Regulation, a person who applies for the benefit shall provide the insurer with such information as is reasonably necessary to enable the insurer to determine the income tax payable by the insured person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario).

(3) Failure to comply with subsection (2) does not relieve the insurer from any time limit established by this Regulation for the payment of the benefit, but the insurer shall determine the amount of the benefit on the basis of its best estimate of the income tax payable by the person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario), subject to later adjustment of the amount of the benefit when subsection (2) is complied with.

Conversion of Part-Time Income to Full-Time Income

86. (1) For the purpose of subsection 29(1), a person's net weekly income used in determining the person's pre-accident earning capacity shall be converted to a full-time net weekly income in accordance with this section if,

- (a) the person was employed on a part-time basis at some point during the period of time used under section 9 for the purpose of determining the amount of the person's weekly income replacement benefits;
- (b) the person would have worked on a full-time basis at some time after the accident; and
- (c) the gross income used under section 9 for the purpose of determining the amount of the person's weekly income replacement benefits includes income from employment other than self-employment.

(2) The full-time net weekly income shall be determined in accordance with section 81 or 82 using a gross annual income determined in accordance with the following formula:

$$A = B \times C \times 52$$

where,

A = the gross annual income,

B = the person's hourly rate of wages or salary in the employment designated under subsection (3),

C = the number of hours in a regular work week for a person employed on a full-time basis in the employment designated under subsection (3), determined in accordance with subsection (4).

(3) For the purpose of subsection (2), the person shall designate one employment, other than self-employment, in which the person engaged on a part-time basis during the time period used under section 9 for the purpose of determining the amount of the person's weekly income replacement benefits.

(4) For the purpose of subsection (2), the number of hours in a regular work week for a person employed on a full-time basis in the employment designated under subsection (3) shall be determined in accordance with the following rules:

1. If the number of hours in a regular work week for a person employed on a full-time basis is fixed by a collective agreement or by law for a person employed in the position in which the person whose full-time net weekly income is to be determined was employed, that number of hours shall be used for the purpose of subsection (2).
2. If rule 1 does not apply but there is a standard number of hours in a regular work week for a person employed on a full-time basis in the position in which the person whose full-time net weekly income is to be determined was employed, that number of hours shall be used for the purpose of subsection (2).
3. If rules 1 and 2 do not apply but there is a standard number of hours in a regular work week for other persons employed on a full-time basis in the workplace in which the person whose full-time net weekly income is to be determined was employed, that number of hours shall be used for the purpose of subsection (2).
4. If rules 1 to 3 do not apply but there is a standard number of hours in a regular work week for persons employed on a full-time basis in the industry or profession in which the person whose full-time net weekly income is to be determined was employed, that number of hours shall be used for the purpose of subsection (2).
5. If rules 1 to 4 do not apply but there is a reasonable method for establishing the number of hours in a regular work week for a person employed on a full-time basis for the purpose of subsection (2), that method shall be used.
6. If rules 1 to 5 do not apply, the number of hours in a regular work week for a person employed on a full-time basis shall be deemed to be 36.5 hours for the purpose of subsection (2).

Severance Pay, Termination Pay

87. For the purpose of this Regulation, payments of severance pay or termination pay shall not be included in a determination of a person's income.

PART XX

MISCELLANEOUS

Application

88. (1) The benefits set out in this Regulation shall be provided under every contract evidenced by a motor vehicle liability policy in respect of accidents occurring on or after January 1, 1994.

(2) Benefits payable under this Regulation in respect of an insured person shall be paid by the insurer who is liable to pay under subsection 268(2) of the *Insurance Act*.

(3) Subject to Part XIV, the insurer shall pay the benefits under this Regulation despite section 225, subsection 223(1), section 240 and subsection 265(3) of the *Insurance Act*.

Method of Payment

89. Subject to clause 69(1)(b) and to section 271 of the *Insurance Act*, payment of a benefit under this Regulation shall be made by cheque payable to the person entitled to the benefit, despite any direction to the contrary.

Assignment of Benefits

90. (1) The assignment of a benefit under this Regulation is void.

(2) Subsection (1) does not apply to,

- (a) the assignment of a benefit to the Ministry of Community and Social Services; or
- (b) the assignment of a benefit to the Ministry of Health in respect of a service, benefit or entitlement provided under an Act the administration of which was transferred by Order-in-Council from the Ministry of Community and Social Services to the Ministry of Health.

Company Automobiles, Rental Automobiles

91. (1) Subject to subsection (3) if an insured automobile is made available for the regular use of an individual who is living and ordinarily present in Ontario by a corporation, unincorporated association, partnership, sole proprietorship or other entity, or an insured automobile is rented to an individual who is living and ordinarily present in Ontario, the individual shall be deemed for the purpose of this Regulation to be the named insured.

(2) Subject to subsection (3) if an insured automobile is made available for the regular use of an individual who is not living and ordinarily present in Ontario by a corporation, unincorporated association, partnership, sole proprietorship or other entity, the individual shall be deemed for the purpose of this Regulation to be the named insured while the individual, his or her spouse or any dependant of either of them is an occupant of the insured automobile.

(3) Subsections (1) and (2) apply in respect of accidents occurring before January 1, 1995.

(4) Subject to subsection (7), if an insured automobile is made available for the regular use of an individual who is living and ordinarily present in Ontario by a corporation, unincorporated association, partnership, sole proprietorship or other entity, or if

an insured automobile is rented for a period of more than 30 days to an individual who is living and ordinarily present in Ontario, the individual shall be deemed to be the named insured under the policy insuring the automobile for the purpose of payment of the statutory accident benefits set out in this Regulation.

(5) Subject to subsection (7), if an insured automobile is rented for a period of 30 days or less to an individual who is living and ordinarily present in Ontario, the individual shall be deemed not to be the named insured under the policy insuring the automobile for the purpose of payment of the statutory accident benefits set out in this Regulation.

(6) Subject to subsection (7), if an insured automobile is made available for the regular use of an individual who is not living and ordinarily present in Ontario by a corporation, unincorporated association, partnership, sole proprietorship or other entity, the individual shall be deemed to be the named insured under the policy insuring the automobile while the individual, his or her spouse or any dependant of either of them is an occupant of the insured automobile.

(7) Subsections (4), (5) and (6) apply in respect of accidents occurring on or after January 1, 1995. O. Reg. 781/94, s. 24(1)-(3).

Copies of Regulation

92. On request, the insurer shall provide a copy of this Regulation without charge to a name insured or a person entitled to benefits under this Regulation.

Notices

93. If an insurer is required or permitted by this Regulation to give a notice to an insured person, the notice shall be given in writing.

Forms

94. Each of the following documents shall be in a form approved by the Commissioner of Insurance:

1. A certificate under subsection 13(5).
2. A certificate under subsection 32(2).
3. A certificate under subsection 34(1).
4. A report under subsection 39(9).
- 4.1 An explanation under subsection 39.1(5).
- 4.2 An explanation under subsection 39.1(6).
5. A report under subsection 45(10).
- 5.1 An explanation under 45.1(5).

- 5.2 A notice under subsection 45.1(6).
- 5.3 An explanation under subsection 50.1(4).
- 5.4 An explanation under subsection 50.1(5).
6. The application forms referred to in clause 59(2)(a).
7. The explanation required by clause 59(2)(b).
8. A certificate under section 60.
9. An election under subsection 61(3) or (6).
10. An explanation under subsection 62(7).
11. A notice under subsection 62(8).
12. [Revoked O. Reg. 781/94, s. 25(2)].
13. A report under subsection 64(10).
14. [Revoked O. Reg. 781/94, s. 25(4).].
15. [Revoked O. Reg. 781/94, s. 25(4)].
16. An explanation under subsection 67(3).
17. A notice under subsection 67(4).
18. An agreement under section 84. O. Reg. 781/94, s. 25(1), (3).

Title

95. This Regulation may be cited as the *Statutory Accident Benefits Schedule – Accidents on or after January 1, 1994*.

COMING INTO FORCE

96. This Regulation comes into force on January 1, 1994.

Form 1

Assessment of Attendant Care Needs

Insurance Act

Return this form to:

Policy No.

Claim No.

Use this form to report the future needs for attendant care required by the client as a result of an automobile accident. This form has five parts:

- Part 1: Personal Attendant Care
- Part 2: Basic/Supervisory Attendant Care
- Part 3: Skilled Attendant Care
- Part 4: Calculation of Attendant Care Costs
- Part 5: Signature of Assessor(s)

Please complete all relevant parts. You will have to make copies and give one to:

- the client
- the client's health practitioner
- the client's insurance company

Client's Name

Client's Name		Date of Birth
Street Address		Date of Accident
City	Province	Postal Code
Name of Policyholder (If different than above)		Policy No.

What is the date of this assessment?

Is this the first assessment of this client? Yes ☐ No ☐

Date of Last Assessment

Current Monthly Allowance

Client's Health
Practitioner

Name of Health Practitioner		Telephone No.
Facility or Institution		
Street Address		
City	Province	Postal Code

Insurance Company

Name		Telephone No.
Street Address		
City	Province	Postal Code
Name of Policyholder		Policy No.

**Part 1:
Personal
Attendant
Care**

Personal attendant care is for routine personal care. Please assess the care requirements of the client for each activity listed. Estimate the time it takes to perform each activity, and the number of times each week it should be performed. Multiply the number of minutes by the number of times each week the activity should be performed to get the total number of minutes per week for each activity.

	Number of Minutes	Times × per week	Total minutes = per week
Dress			
Upper Body (for example, underwear, shirt/blouse, sweater, tie, jacket, gloves, jewelry)			
Lower Body (for example, underwear, disposable briefs, skirt/pants, socks, panty hose, slippers, shoes)			
Subtotal			
Undress			
Upper Body (for example, underwear, shirt/blouse, sweater, tie, jacket, gloves, jewelry)			
Lower Body (for example, underwear, disposable briefs, skirt/pants, socks, panty hose, slippers, shoes)			
Subtotal			
Prosthetics			
applies upper/lower limb prosthesis and stump sock(s)			
exchanges terminal devices and adjusts prosthesis as required			
ensures prosthesis is properly maintained and in good working condition			
Subtotal			
Orthotics			
assists dressing client using prescribed orthotics (for example, burn garment(s), brace(s), supports, splints, elastic stockings)			
Subtotal			
Grooming			
Face: wash, rinse, dry, morning and evening			
Hands: wash, rinse, dry, morning and evening, before and after meals, and after elimination			
Shaving: shaves client using an electric/safety razor			
Cosmetics: applies makeup as desired or required			
Hair:			
brushes/combs as required			
shampoos, blow/towel dries			
performs styling, set and comb-out			
Fingernails: cleans and manicures as required			
Toenails: cleans and trims as required			
Subtotal			

Form 1

REGULATIONS UNDER THE INSURANCE ACT

Part 1 continued . . .

		Number of Minutes	× Times per week	= Total minutes per week
Feeding	prepares client for meals (includes transfer to appropriate location)			
	provides assistance, either in whole or in part, in serving and feeding meals			
	Subtotal			
Mobility <small>for short changes such as to and from the bathroom for afternoon visits</small>	assists client from a sitting position (for example, wheelchair, chair, sofa)			
	supervises/assists in walking			
	performs transfer needs as required (for example, bed to wheelchair, wheelchair to bed)			
	Subtotal			
Extra Laundering	launders client's bedding and clothing as a result of incontinence/spillage			
	launders/cleans orthotic supplies that require special care			
	Subtotal			

Part 1 Total - Add all Part 1 Subtotals. Fill in total here and in Part 4 on Page 7.

Part 2: Basic/ Supervisory Attendant Care

Basic/supervisory attendant care is for basic supervisory functions that require responsible personnel. Please assess the care requirements of the client for each activity listed. Estimate the time it takes to perform each activity, and the number of times each week it should be performed. Multiply the number of minutes by the number of times each week the activity should be performed to get the total number of minutes per week for each activity.

	Number of Minutes	× Times per week	= Total minutes per week
Hygiene	Bathroom		
	clean tub/shower/sink/toilet after client's use		
	Bedroom		
	changes client's bedding, makes bed, cleans bedroom, including Hoyer lifts, overhead bars, bedside tables		
	ensures comfort, safety and security in this environment		
	Clothing Care		
	assists in preparing daily wearing apparel		
	hangs clothes and sorts clothing to be laundered/cleaned		
Subtotal			

Part 2 continued . . .

		Number of Minutes	×	Times per week	=	Total minutes per week
Ventilator Dependant (high level quadriplegic or approx.)	client lacks the capacity to reattach tubing if it becomes detached from the trachea					
	client lacks the physical capacity to be self-sufficient in an emergency situation					
	Subtotal					
Spinal Cord Injuries (paraplegic/ quadriplegic)	client requires assistance to transfer from bed to wheelchair, periodic turning, genitourinary care					
	client lacks the physical capacity to be self-sufficient in an emergency situation					
	Subtotal					
Severe Head Injuries	client lacks ability to respond to an emergency or needs custodial care due to changes in behaviour					
	Subtotal					
Attendant Care on an Intermittent Basis	client lives alone or is left alone in the day, determine the degree to which the client may be dependent on others (for example, meals, laundry, housekeeping)					
	client may be independent during the day when in a wheelchair or wearing a prosthesis, but needs assistance for meals, laundry					
	Subtotal					
Multiple Amputations (upper bilateral, triple, quadruple amputations)	client lacks the ability to independently get in and out of a wheelchair or to be self-sufficient in an emergency					
	Subtotal					
Financial Affairs	client requires assistance in managing financial affairs (maximum 1 hour per week)					
	Subtotal					
Part 2 Total - Add all Part 2 Subtotals. Fill in total here and in Part 4 on Page 7.						

**Part 3:
Skilled
Attendant
Care**

Skilled attendant care is for complex health/care and hygiene functions that require trained or skilled personnel. Please assess the care requirements of the client for each activity listed. Estimate the time it takes to perform each activity, and the number of times each week it should be performed. Multiply the number of minutes by the number of times each week the activity should be performed to get the total number of minutes per week for each activity.

	Number of Minutes	×	Times per week	=	Total minutes per week
Genitourinary Tracts	performs catheterizations				
	positions, empties and cleans drainage systems				
	cleans client and equipment after procedure/incontinence				
	uses disposable briefs as required				
	attends to menstrual cycle needs as required				
	monitors residuals				
	Subtotal				
Bowel Care	administers enemas or suppositories and performs stimulation or disimpaction				
	performs colostomy and/or ileostomy care				
	positions, empties and cleans drainage systems, including bio-conduits				
	uses disposable briefs as required				
	cleans client and equipment after procedure/evacuation				
	Subtotal				
Tracheostomy Care	changes and cleans inner and outer cannulae as needed				
	changes tapes as required				
	performs suctioning as required				
	cleans and maintains suction equipment				
	Subtotal				
Ventilator Care	ensures volume rate and pressure are maintained as prescribed				
	maintains humidification as specified				
	changes and cleans tubing and filters as required				
	cleans humidification system as required				
	adjusts settings according to client needs (for example, colds, congestion)				
	Subtotal				
Exercise	assists client with prescribed exercise/stretching program				
	assists client with walking activities using crutches, canes, braces and/or walker				
	Subtotal				

Part 3 continued . . .

Number
of
Minutes

×

Times
per
week

=

Total
minutes
per week

Skin Care
(excluding bathing)

attends to skin care needs - wounds, sores, eruptions (amputees, severe burns, spinal cord injuries, etc.)			
applies medication and prescribed dressings			
applies creams, lotions, pastes, ointments, powders as prescribed or required			
checks body area(s) for evidence of pressure sores, skin breakdown or eruptions			
periodic turning to prevent or minimize pressure sores and skin breakdown/shearing			
Subtotal			

Medication

Oral			
administers prescribed medications			
monitors medication intake and effect			
maintains and controls medication supply			
Injections			
administers prescribed medications			
monitors medication intake and effect			
maintains and controls medication supply			
Inhalation/Oxygen Therapy			
administers prescribed dosage as required			
maintains and controls inhalation supplies			
cleans and maintains equipment			
Subtotal			

Bathing

Bathub or Shower			
transfers client to and from bed, wheelchair or Hoyer lifts to bathub or shower			
bathes and dries client			
applies creams, lotions, pastes, ointments, powders as prescribed or required			
Bed Bath			
prepares equipment			
bathes and dries client			
applies creams, lotions, pastes, ointments, powders as prescribed or required			
cleans and maintains bed/bath equipment			
Oral Hygiene			
brushes and flosses			
cleanses mouth as required			
cleans dentures as required			
Subtotal			

Part 3 continued . . .

Number of Minutes × Times per week = Total minutes per week

Other Therapy	Transcutaneous Electrical Nerve Stimulation (TENS)			
	prepares equipment			
	administers treatment as prescribed or required			
	Dorsal Column Stimulation (DCS)			
	monitors skin			
	maintains equipment			
Subtotal				

Maintenance of Supplies and Equipment	monitors, orders and maintains required supplies/equipment			
	ensures wheelchairs, prosthetic devices, Hoyer lifts, shower commodes and other specialized medical equipment and assistive devices are safe and secure			
Subtotal				

Part 3 Total - Add all Part 3 Subtotals. Fill in total here and below.

Part 4:
Calculation
of Attendant
Care Costs

This part must be completed by the assessor. Calculate the monthly attendant care allowance for Part 1, 2, and 3. The sum of all three parts will be the Total Assessed Monthly Attendant Care Benefit.

	Total Minutes Per Week	Total Weekly Hours	Total Monthly Hours	Hourly Rate	Monthly Care Benefit
Part 1 (from Pg 3)	× 60 =	÷ 43 =	×	\$	\$
Part 2 (from Pg 4)	× 60 =	÷ 43 =	×	\$	\$
Part 3 (from Pg 7)	× 60 =	÷ 43 =	×	\$	\$

Total Assessed Monthly Attendant Care Benefit (This amount is subject to the limits allowed under the Statutory Accident Benefits Schedule)

\$

Part 5:
Signature(s)
of Assessor(s)

Name	Signature
Title	Date
Name of Assessing Facility	Telephone No.
Street Address	Fax No.
City	Province
	Postal Code

Amendments to Form 1

1. The first paragraph is amended by striking out,

- Part 1: Personal Attendant Care
- Part 2: Basic/Supervisory Attendant Care
- Part 3: Skilled Attendant Care

and substituting:

- Part 1: Level 1 Attendant Care
- Level 2 Attendant Care
- Part 3: Level 3 Attendant Care.

O. Reg. 781/94, s. 26(1)

2. The heading to Part 1 is revoked and replaced by:

- Part 1: Level 1 Attendant Care

O. Reg. 781/94, s. 26(2)

3. The first line of the first paragraph of Part 1 is amended by striking out “Personal Attendant” and substituting “Level 1 attendant”.

O. Reg. 781/94, s. 26(3)

4. The heading to Part 2 is revoked and replaced by:

- Part 2: Level 2 Attendant Care

O. Reg. 781/94, s. 26(4)

5. The first and second lines of the first paragraph of Part 2 are amended by striking out:

“Basic/Supervisory attendant care is for basic supervisory functions that require personnel”

and substituting:

“Level 2 attendant care is for basic supervisory functions”

O. Reg. 781/94, s. 26(5)

6. The heading to Part 3 is revoked and substituted by:

- Part 3: Level 3 Attendant Care

O. Reg. 781/94, s. 26(6)

7. The first and second lines of the first paragraph in Part 3 are amended by striking out:

“Skilled attendant care is for complex health/care and hygiene functions that require trained or skilled personnel”

and substituting:

“Level 3 attendant care is for complex health/care and hygiene functions”

O. Reg. 781/94, s. 26(7)

ONTARIO REGULATION 777/93
STATUTORY CONDITIONS — AUTOMOBILE
INSURANCE

O. Reg. 777/93

1. (1) The conditions set out in the Schedule are prescribed as statutory conditions for the purpose of section 234 of the Act.

(2) Subject to subsection 234(3) of the Act, the statutory conditions apply to all contracts of automobile insurance entered into or renewed on or after January 1, 1994.

SCHEDULE

STATUTORY CONDITIONS

In these statutory conditions, unless the context otherwise requires, the word “insured” means a person insured by this contract, whether named or not.

Material Change In Risk

1. (1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within the insured’s knowledge.

(2) Without restricting the generality of the foregoing, the words “change in the risk material to the contract” include:

- (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy and Insolvency Act* (Canada);

and, in respect of insurance against loss of or damage to the automobile,

- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
- (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

Incorrect Classification

2. (1) Where the insured has been incorrectly classified under the risk classification system used by the insurer or under the risk classification system that the insurer is required by law to use, the insurer shall make the necessary correction.

Refund of Premium Overpayment

(2) Where a correction is made under subcondition (1) of this condition, the insurer shall refund to the insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made, rounded to the next highest whole number if the bank rate includes a fraction.

Definition

(3) In subcondition (2) of this condition, "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

Additional Premium

(4) Where a correction is made under subcondition (1) of this condition within sixty days after this contract takes effect, the insurer may require the insured to pay any additional premium resulting from the correction, without interest.

Monthly Payments

3. Unless otherwise provided by the regulations under the *Insurance Act*, the insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The insurer may charge interest not exceeding the rate set out in the regulations.

Authority To Drive

4. (1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.

Prohibited Use

(2) The insured shall not use or permit the use of the automobile in a race or speed test or for any illicit or prohibited trade or transportation.

Requirements Where Loss or Damage to Persons or Property

5. (1) The insured shall,

(a) give to the insurer written notice, with all available particulars, of any accident

involving loss or damage to persons or property and of any claim made on account of the incident;

- (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
- (c) forward immediately to the insurer every letter, document, advice or statement of claim received by the insured from or on behalf of the claimant.

(2) The insured shall not,

- (a) voluntarily assume any liability or settle any claim except at the insured's own cost; or
- (b) interfere in any negotiations for settlement or in any legal proceeding.

(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Requirements Where Loss or Damage to Automobile

6. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,

- (a) give notice thereof in writing to the insurer with the fullest information obtainable at the time;
- (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
- (c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of the insured's knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur directly or indirectly through any wilful act or neglect of the insured.

(2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.

(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed.

- (a) without the written consent of the insurer; or

- (b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 8.

Examination of Insured

(4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in the insured's possession or control that relate to the matters in question, and the insured shall permit extracts and copies thereof to be made.

Insurer Liable For Cash Value of Automobile

(5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

Repair or Replacement

(6) The insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost, with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

No Abandonment; Salvage

(7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

Time Limit

7. The notice required by statutory conditions 5 and 6 shall be given to the insurer within seven days of the incident but if the insured is unable because of incapacity to give the notice within seven days of the incident, the insured shall comply as soon as possible thereafter.

Inspection of Automobile

8. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

Time and Manner of Payment of Insurance Money

9. (1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it.

Reasons For Refusal

(2) If the insurer refuses to pay a claim, it shall promptly inform the insured in writing of the reasons the insurer claims it is not liable to pay.

When Action May Be Brought

(3) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 5 and 6 are complied with.

Limitations of Actions

(4) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

Who May Give Notice and Proofs of Claim

10. Notice of claim may be given and proofs of claim may be made by the agent of the insured in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination

11. (1) Subject to section 12 of the *Compulsory Automobile Insurance Act* and sections 237 and 238 of the *Insurance Act*, this contract may be terminated by the insurer giving to the insured fifteen days notice of termination by registered mail or five days written notice of termination personally delivered.

(2) This contract may be terminated by the insured at any time on request.

(3) Where this contract is terminated by the insurer,

(a) the insurer shall refund the excess of premium actually paid by the insured over the proportionate premium for the expired time, but in no event shall the proportionate premium for the expired time be deemed to be less than any minimum retained premium specified; and

(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case, the refund shall be made as soon as practicable.

(4) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(5) The fifteen days mentioned in subcondition (1) of this condition begin to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Notice

12. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written notice may be given to the insured named in this contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

Statutory Accident Benefits Protected

13. Despite a failure to comply with these statutory conditions, a person is entitled to such benefits as are set out in the *Statutory Accident Benefits Schedule*

ONTARIO REGULATION 777/94
INVESTMENTS UNDER SUBSECTION 433(9) OF THE
ACT

O. Reg. 777/94

1. (1) The following classes of bodies corporate are prescribed for the purpose of subsection 433(9) of the Act:

1. Bodies corporate the activities of which are limited to activities that are ancillary to the business of insurance.
2. Insurers licensed in Ontario that are incorporated by or under the laws of Canada, Ontario or another province of Canada.
3. Loan or trust corporations registered under the *Loan and Trust Corporations Act* that are incorporated by or under the laws of Canada, Ontario or another province of Canada.
4. Banks to which the *Bank Act* (Canada) applies.
5. Bodies corporate that,
 - i. are incorporated or formed by or under the laws of Canada, Ontario or another province of Canada, and
 - ii. are primarily engaged in dealing in securities, including portfolio management and investment counselling.
6. Bodies corporate that are primarily engaged in,
 - i. providing the collection, manipulation and transmission of information that is primarily financial or economic in nature or that relates to the business of a body corporate referred to in this section,
 - ii. providing advisory or other services in the design, development and implementation of information management systems, or
 - iii. designing, developing and marketing computer software.
7. Bodies corporate the principal activity of which consists of,
 - i. the offering of advice or advising on investments, or
 - ii. the investment or control, in any way that involves an element of discretionary judgment by the bodies corporate, of money, property, deposits or securities that,
 - A. are not owned by the bodies corporate, or
 - B. are not money deposited with the bodies corporate in the ordinary course of business.

8. Bodies corporate the activities of which are limited to the investing of their own funds, including bodies corporate that are issuers of securities that entitle the holder to receive, on demand or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuers of those securities.
9. Bodies corporate the principal activity of which is acting as selling agents of units, shares or other interests in one or more mutual funds and acting as a collecting agent in the collection of payments for any such interests if,
 - i. the proceeds of the sales of any such interests, less any sales commissions and service fees, are paid to the funds, and
 - ii. the existence of a sales commission and service fee in respect of the sale of any such interests is disclosed to the purchaser of the interests prior to the purchase thereof.
10. Bodies corporate that are primarily engaged in,
 - i. acting as agents for vendors, purchasers, mortgagors, mortgagees, lessors or lessees of real estate, and
 - ii. the provision of consulting or appraisal services in respect of real estate.
11. Bodies corporate that are engaged exclusively in providing services to,
 - i. one or more mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund, or
 - ii. a corporation that, as a result of an investment under subsection 433(9) of the Act, is or will be controlled by one or more mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund.

(2) The activities of a body corporate referred to in paragraph 6 of subsection (1) may include, as an ancillary activity, the design, development, manufacture or sale of computer hardware.

2. For the purpose of subsection 433(9) of the act and paragraph 11 of subsection 1(1), one or more mutual insurance corporations control a body corporate if they own, other than by way of security, shares of the body corporate carrying more than 50 per cent of the votes for the election of directors and the votes carried by the shares are sufficient, if exercised, to elect a majority of the body corporate's board of directors.

3. This Regulation comes into force on the day section 338 of the *Financial Services Statute Law Reform Amendment Act, 1994*, comes into force.

ONTARIO REGULATION 283/95

DISPUTES BETWEEN INSURERS

O. Reg. 283/95

1. All disputes as to which insurer is required to pay benefits under section 268 of the Act shall be settled in accordance with this Regulation.

2. The first insurer that receives a completed application for benefits is responsible for paying benefits to an insured person pending the resolution of any dispute as to which insurer is required to pay benefits under section 268 of the Act.

3. (1) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section.

(2) An insurer may give notice after the 90-day period if,

(a) 90 days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and

(b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period.

(3) The issue of whether an insurer who has not given notice within 90 days has complied with subsection (2) shall be resolved in an arbitration under section 7.

4. An insurer that gives notice under section 3 shall also give notice to the insured person using a form approved by the Commissioner.

5. (1) An insured person who received a notice under section 4 shall advise the insurer paying benefits in writing within 14 days whether he or she objects to the transfer of the claim to the insurers referred to in the notice.

(2) If the insured person does not advise the insurer within 14 days that he or she objects to the transfer of the claim, the insured person is not entitled to object to any subsequent agreement or decision to transfer the claim to the insurers referred to in the notice.

(3) An insured person who has given notice of an objection is entitled to participate as a party in any subsequent proceeding to settle the dispute and no agreement between insurers as to which insurer should pay the claim is binding unless the insured person consents to the agreement or 14 days have passed since the insured person was notified in writing of an agreement and the insured person has not initiated an arbitration under the *Arbitration Act, 1991*.

6. The insured person shall provide the insurers with all relevant information needed to determine who is required to pay benefits under section 268 of the Act.

7. (1) If the insurers cannot agree as to who is required to pay benefits or if the insured person disagrees with an agreement among insurers that an insurer other than the

insurer selected by the insured person should pay the benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991*.

(2) The insurer paying benefits under section 2, any other insurer against whom the obligation to pay benefits is claimed or the insured person who has given notice of an objection to a change in insurers under section 5 may initiate the arbitration but no arbitration may be initiated after one year from the time the insurer paying benefits under section 2 first gives notice under section 3.

8. (1) Except as provided in this Regulation, the *Arbitration Act, 1991* applies to an arbitration under this Regulation.

(2) The decisions of an arbitrator made under this Regulation shall be public.

9. (1) Unless otherwise ordered by the arbitrator or agreed to by all the parties before the commencement of the arbitration, the costs of the arbitration for all parties, including the cost of the arbitrator, shall be paid by the unsuccessful parties to the arbitration.

(2) The costs referred to in subsection (1) shall be assessed in accordance with section 56 of the *Arbitration Act, 1991*.

10. (1) If an insurer who receives notice under section 3 disputes its obligation to pay benefits on the basis that other insurers, excluding the insurer giving notice, have equal or higher priority under section 268 of the Act, it shall give notice to the other insurers.

(2) This Regulation applies to the other insurers given notice in the same way that it applies to the original insurer given notice under section 3.

(3) The dispute among the insurers shall be resolved in one arbitration.

11. If the Motor Vehicle Accident Claims Fund receives an application for benefits, sections 4 and 5 do not apply and the insured person is not entitled to initiate or participate as a party in an arbitration under section 7.

ONTARIO AUTOMOBILE POLICY FORM 1

(O.P.F. 1)

(Owner's Policy)

PLEASE NOTE that the **General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Part E, Sections 5.1 to 5.12, and Part F, sections 6.1 to 6.3, apply to every Part of the Policy, except as stated in those sections.**

Each Part of the Policy should be read subject to these provisions.

INSURING AGREEMENTS

In consideration of the payment of the premium specified and of the statements contained in the application **and subject to the limits, terms, conditions, provisions, definitions and exclusions stated herein, in particular the condition that the insurer shall be liable only** under the section(s) or subsection(s) of the following Parts for which a premium is stated in the Certificate of Insurance:

PART A

THIRD PARTY LIABILITY

INJURY OR DAMAGE TO OTHER PERSONS OR PROPERTY, AND TO THE AUTOMOBILE AND ITS CONTENTS

1.1 The insurer agrees to indemnify the insured and, in the same manner and to the same extent as if named in this Policy as the insured, every other person who with the insured's consent drives or operates the automobile, or is an occupant of the automobile, against the liability imposed by law upon the insured or upon such other person for loss or damage arising from the ownership, or directly or indirectly from the use or operation of the automobile, and resulting from **BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY.**

1.2 Where section 230a of the *Insurance Act* (Direct Compensation — Property Damage) applies, the insurer agrees to indemnify the insured under this Part as though the insured were a third party for damages caused to the automobile owned by the insured, its equipment, and its contents if not carried for reward, and for loss of use of the automobile, in accordance with the *Insurance Act* and the Fault Determination Rules made under the Act.

EXCLUSIONS

1.3 THE INSURER SHALL NOT BE LIABLE UNDER THIS PART,

- 1.3.1 for loss or damage to property carried in or upon the automobile, except where section 230a of the *Insurance Act* (Direct Compensation — Property Damage) applies;
- 1.3.2 for loss or damage to any property, other than property carried in or upon the automobile, which is owned or rented by, or is in the care, custody or control of any person insured by this Part, except where section 230a of the *Insurance Act* (Direct Compensation — Property Damage) applies;
- 1.3.3 for any amount in excess of the limit stated in Item 4, Part A of the Certificate of Insurance, and expenditures provided for in the Additional Agreements of this Part, but subject to section 223 of the *Insurance Act* (nuclear energy hazard); or
- 1.3.4 for any liability arising from contamination of property carried in the automobile.

ADDITIONAL AGREEMENTS OF INSURER

1.4 Where indemnity is provided by this Part, the insurer shall,

- 1.4.1 upon receipt of notice of loss or damage caused to persons or property, make such investigations, negotiations or settlement of any resulting claims on behalf of any person insured by this Policy as may be deemed expedient by the insurer;
- 1.4.2 defend in the name and on behalf of any person insured by this Policy and at the cost of the insurer any civil action which may be brought against such person on account of such loss or damage to persons or property;
- 1.4.3 pay all costs assessed against any person insured by this Policy in any civil action defended by the insurer and any interest accruing after judgment upon that part of the judgment which is within the limits of the insurer's liability;
- 1.4.4 if the injury is to a person, reimburse any person insured by this Policy for amounts paid for such medical aid as is immediately necessary at the time of such injury;
- 1.4.5 be liable up to the minimum limit prescribed for that province or territory of Canada in which the accident occurred, if that limit is higher than the limit stated in Item 4, Part A of the Certificate of Insurance; and
- 1.4.6 not set up any defense to a claim that might not be set up if the Policy were a motor vehicle liability Policy issued in the province or territory of Canada in which the accident occurred.

MULTIPLE INSURED

1.5 Indemnity under this Part is available in respect of a claim or action by one named insured against another named insured, provided,

- (a) coverage shall apply in the same manner and to the same extent as if a separate Policy were issued to each insured; and
- (b) the insurer **SHALL NOT BE LIABLE** for any amount in excess of the limit in Item 4, Part A of the Certificate of Insurance.

AGREEMENTS OF THE INSURED

1.6 Where indemnity is provided by this Part, every person insured by this Policy,

- 1.6.1 by the acceptance of this Policy, irrevocably appoints the insurer as the insured's attorney to appear and defend in any province or territory of Canada in which action is brought against the insured arising directly or indirectly out of the ownership, use or operation of the automobile; and
- 1.6.2 shall reimburse the insurer, upon demand, any amount which the insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the insurer would not otherwise be liable to pay under this Policy.

PART B

ACCIDENT BENEFITS

PLEASE NOTE that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Part E, Sections 5.1 to 5.12, and Part F, sections 6.1 to 6.3, apply to every Part of the Policy, except as stated in those sections.

This Part of the Policy should be read subject to these provisions.

Application Despite Certain Provisions of *Insurance Act*

2.1 The insurer agrees to pay such accident benefits as are set out in this Part despite section 201a, subsection 206(1), section 209a, subsection 231(2a), and Statutory Condition 1(1) of section 207 of the *Insurance Act*.

Definitions and Interpretation

2.2 In Part B (Accident Benefits),

- 2.2.1 “accident” means an incident in which the use or operation of an automobile causes, directly or indirectly, physical, psychological or mental injury or causes damage to any prosthesis, denture, prescription eyewear, hearing aid or other medical or dental device;
- 2.2.2 “dependant” means a person who is principally dependent for financial support on another person or the other person’s spouse;
- 2.2.3 “insured person”, in respect of this Policy, means,
- (a) in respect of accidents in Ontario, an occupant of the automobile;
 - (b) in respect of accidents outside Ontario, a person living and ordinarily present in Ontario who is an occupant of the automobile;
 - (c) the named insured, his or her spouse and any dependant of either of them while the occupant of any other automobile;
 - (d) any person who is not the occupant of an automobile or of rolling stock that runs on rails who is involved in an accident in Ontario involving the automobile;
 - (e) the named insured, his or her spouse and any dependant of either of them who is not the occupant of an automobile or of rolling stock that runs on rails who is involved in an accident;
 - (f) the named insured, his or her spouse and any dependant of either of them who is not involved in an accident but who suffers psychological or mental injury as a result of an accident involving a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother or sister, or any dependant of the named insured or of his or her spouse;
 - (g) any person who suffers injuries as a result of an accident involving the automobile who has no recourse against any other insurer under a contract evidenced by a motor vehicle liability Policy in respect of which the person is a named insured or the spouse or dependant of a named insured; or against the insurer of the automobile in which the person was an occupant or which struck the person.

Additional Insured

- 2.3 If the automobile is made available for the regular use of an individual, whether or not a resident of Ontario, by a corporation, unincorporated association, partnership, sole proprietorship or other entity, or is rented to an individual who is a resident of Ontario, this Part applies to the individual and his or her spouse and their dependants as if the individual were a named insured.

SUPPLEMENTARY MEDICAL, REHABILITATION AND CARE BENEFITS

Supplementary Medical and Rehabilitation Benefits

2.4 The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident, all reasonable expenses resulting from the accident within the benefit period set out in section 2.6 for,

- (a) medical, psychological, surgical, dental, hospital, chiropractic, nursing and ambulance services and the services of physiotherapists;
- (b) prostheses, dentures, prescription eyewear; hearing aids and other medical or dental devices;
- (c) rehabilitation, life-skills training and occupational counselling and training;
- (d) transportation for the person to and from treatment, counselling and training sessions, including transportation for an assistant;
- (e) home renovations to accommodate the needs of the insured person;
- (f) other goods and services, whether medical or non-medical in nature, which the insured person requires because of the accident.

2.5 The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident an allowance that is reasonable having regard to all of the circumstances for expenses actually incurred by a spouse, child, grandchild, parent, grandparent, brother or sister of the insured person in visiting the insured person during his or her treatment or recovery.

2.6 For the purposes of section 2.4, the benefit period is the longer of the two following periods calculated from the day of the accident and ending on the anniversary of the accident:

1. Ten Years.
2. Twenty years less the age of the victim on the day of the accident.

2.7 Subject to clauses (a) and (b), the insurer, before making a payment for an expense under section 2.4, may require the insured person to submit a statement signed by the insured person's qualified medical practitioner or psychological advisor stating that the expense is necessary for the insured person's treatment or rehabilitation.

- (a) A person qualified to practise as a chiropractor may sign a statement required under this section in respect of chiropractic services under clause 2.4(a).
- (b) A person qualified to practise dentistry may sign a statement required under this section in respect of dental services and dentures under clauses 2.4(a) and (b).

2.8 In case of a dispute concerning an expense described in clause 2.4(a), (b) or (d), the insurer will pay the expense pending resolution of the dispute.

2.9 The maximum amount payable under sections 2.4 and 2.5 combined is \$500,000 with respect to each insured person.

Care Benefits

2.10 The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident, for the care, if any, required by the insured person,

- (a) the reasonable cost of a professional caregiver or the amount of gross income reasonably lost by a person other than the insured person as a result of the accident in caring for the insured person; and
- (b) all reasonable expenses resulting from the accident in caring for the insured person after the accident.

2.11 The maximum amount payable per month under section 2.10 is \$3,000 a month with respect to each insured person; and the total maximum amount payable under the section is \$500,000 with respect to each insured person.

Damage to Clothing, Glasses, Hearing Aids, and Other Devices

2.12 The insurer will pay an insured person for the reasonable cost of repairing or replacing clothing worn by the insured person at the time of the accident and prostheses, dentures, prescription eyewear, hearing aids, other medical or dental devices that are lost or damaged in an accident.

EXCEPTION

2.13 THE INSURER WILL NOT PAY any portion of an expense referred to in sections 2.4, 2.5 or 2.10 for a service that is reasonably available to the insured person under any insurance plan or law or under any other plan or law that will pay the expense.

2.14 The insurer will pay benefits for Supplementary Medical, Rehabilitation and Care, and for damage under section 2.12 even though the insured person is entitled to or has received benefits under an Act administered by the Ministry of Community and Social Services for Ontario or under similar legislation in another jurisdiction.

FUNERAL EXPENSES AND DEATH BENEFITS

Funeral Expenses

2.15 The insurer will pay, with respect to each insured person who dies as a result of an accident, funeral expenses incurred up to \$3,000 if Optional Benefit 1 had not been purchased, and up to \$7,500 if it has been purchased.

Death Benefits

2.16 If, as a result of an accident, an insured person dies within the benefit period set out in section 2.18, the insurer will pay with respect to the insured person, if Optional Benefit 1 has not been purchased,

- (a) \$25,000 to his or her spouse, if the deceased is survived by a spouse who was his or her spouse at the time of the accident;
- (b) \$25,000 to his or her dependants, if the deceased is survived by any dependant who was a dependant at the time of the accident and is not survived by a spouse who is entitled to a benefit under this section;
- (c) \$10,000 to each of his or her surviving dependants who was a dependant at the time of the accident; and
- (d) if, at the time of the accident, the deceased was a dependant, \$10,000,
 - (i) to the person upon whom the deceased was dependent or if that person is dead, to the surviving spouse of that person if the surviving spouse was the deceased's primary caregiver, or
 - (ii) to the other surviving dependants of the person upon whom the deceased was dependent if that person and his or her spouse are dead.

2.17 If, as a result of an accident, an insured person dies within the benefit period set out in section 2.18, the insurer will pay with respect to the insured person, if Optional Benefit 1 has been purchased,

- (a) \$50,000 to his or her spouse, if the deceased is survived by a spouse who was his or her spouse at the time of the accident;
- (b) \$50,000 to his or her dependants, if the deceased is survived by any dependant who was a dependant at the time of the accident and is not survived by a spouse who is entitled to a benefit under this section;
- (c) \$20,000 to each of his or her surviving dependants who was a dependant at the time of the accident; and
- (d) if, at the time of the accident, the deceased was a dependant, \$20,000,
 - (i) to the person upon whom the deceased was dependent or if that person is dead, to the surviving spouse of that person if the surviving spouse was the deceased's primary caregiver, or
 - (ii) to the other surviving dependants of the person upon whom the deceased was dependent if that person and his or her spouse are dead.

2.18 For the purposes of sections 2.16 and 2.17, the benefit period is,

- (a) 180 days from the day of the accident unless clause (b) applies; or
- (b) 156 weeks from the day of the accident if during that period there has been continuous disability as a result of the accident.

2.19 If at the time of the accident the deceased person had more than one person entitled to claim as his or her spouse, the \$25,000 payment under section 2.16 or \$50,000 under section 2.17 will be divided equally between or among such persons who survive the deceased and who at the time of the death were still spouses of the deceased.

2.20 The payments under sections 2.16 (b) and (d)(ii) and 2.17 (b) and (d)(ii) will be paid in equal shares to the surviving dependants.

2.21 No amount is payable under sections 2.16 or 2.17 to a spouse or dependant unless the spouse or dependant, as the case may be, survives the deceased by thirty days.

WEEKLY BENEFITS

Income Benefit

2.22 The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident a weekly income benefit during the period which the insured person suffers substantial inability to perform the essential tasks of his or her occupation or employment if the insured person meets the qualifications set out sections 2.23 or 2.24.

2.23 The following qualifications apply to an insured person who claims a weekly benefit under section 2.22:

- 2.23.1** At the time of the accident, he or she must have been,
 - (i) employed or self-employed,
 - (ii) on a temporary lay-off, or
 - (iii) entitled to start work within one year under a legitimate offer of employment made before the accident and evidenced in writing.
- 2.23.2** As a result of and within two years of the accident, he or she must have suffered a substantial inability to perform the essential tasks of his or her occupation or employment.

2.24 A person who was unemployed and who was not self-employed at the time of the accident is qualified to receive a weekly benefit under section 2.22 if he or she was employed or self-employed for any 180 days in the twelve-month period before the accident, and if he or she as a result of and within two years of the accident has suffered a substantial inability to perform the essential tasks of the occupation or employment in which he or she spent the most time during the twelve-month period before the accident.

2.25 Subject to section 2.26, the weekly benefit under section 2.22 will be the lesser of,

- (a) \$600 plus, if Optional Benefit 2 has been purchased, the amount of the benefit chosen; and
- (b) 80 per cent of the insured person's gross weekly income from his or her occupation or employment, less any payments for loss of income, except Unemployment Insurance benefits,
 - (i) received by or available to the insured person under the laws of any jurisdiction or under any income continuation benefit plan, or
 - (ii) received under any sick leave plan.

2.26 The insurer is not required to pay a weekly benefit under section 2.22

- (a) for the first week of the disability;
- (b) for any period in excess of 156 weeks unless it has been established that the injury continuously prevents the insured from engaging in any occupation or employment for which he or she is reasonably suited by education, training or experience.

2.27 An insurer is not required to pay a weekly benefit under section 2.22 to a person described in section 2.23.1.(ii) until the day the person would have been entitled under the contract to begin employment, unless before that day the person is qualified for a benefit under another Part of section 2.23.

2.28 The following rules apply to the calculation of gross weekly income:

- 2.28.1 A person's gross weekly income shall be deemed to be the greatest of,
 - (i) his or her average gross weekly income from his or her occupation or employment for the four weeks preceding the accident,
 - (ii) his or her average gross weekly income from his or her occupation or employment for the fifty-two weeks preceding the accident,
 - (iii) \$232.
- 2.28.2 When a person becomes qualified to receive an income benefit under section 2.23.1.(iii), the person's gross weekly income shall be deemed to be the greatest of,
 - (i) if the person was qualified under either section 2.23.1(i) or (ii), his or her gross weekly income as determined under 2.23.1,
 - (ii) the gross weekly income payable under the contract of employment,
 - (iii) \$232.

- 2.28.3** Business expenses which cease as a result of the accident shall be deducted from a person's income from self-employment before calculating his or her gross weekly income.

Benefit if No Income

2.29 The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident, a weekly benefit during the period which the insured person suffers substantial inability to perform the essential tasks in which he or she would normally engage if he or she meets the qualifications set out in section 2.30.

2.30 The following qualifications apply to an insured person who claims weekly benefits:

1. He or she as a result of and within two years of the accident must have suffered a substantial inability to perform the essential tasks in which he or she would normally engage.
2. He or she must not be entitled to receive a benefit under section 2.22 at the time of the payment of a benefit under this section, or, if entitled to a benefit under that section, he or she must be a primary caregiver as described in section 2.32 and have only income from self-employment from work in his or her home.
3. He or she must attain the age of sixteen years before being eligible to receive the weekly benefit.

2.31 The weekly benefit under section 2.29 will be \$185 less any payments for loss of income, except Unemployment Insurance benefits,

- (a) received by or available to the insured person under the laws of any jurisdiction or under any income continuation benefit plan; or
- (b) received under any sick leave plan.

2.32 The insurer will pay to an insured person who is receiving a weekly benefit under section 2.29, or who but for section 2.40 would be entitled to the weekly benefit, a benefit of \$50 per week, if Optional Benefit 3 has not been purchased, or \$100 per week, if it has been purchased, for each person who at the time of the accident was residing with the insured person and in respect of whom the insured person was the primary caregiver if the person receiving the care was less than sixteen years of age or if the person required the care because of physical or mental incapacity.

2.33 The maximum additional benefit payable under 2.32 is \$200 per week, if Optional Benefit 3 has not been purchased, or \$400 per week if it has been purchased.

2.34 An additional weekly benefit under section 2.32 ceases,

- (a) when the person cared for attains age sixteen, unless he or she is incapacitated;
- (b) when the incapacity of the person cared for ceases; or
- (c) when the insured ceases to be eligible for a benefit under section 2.29 or when the insured person would cease to be eligible had he or she not been disqualified under section 2.40.

2.34A A person cannot receive benefits under this section and section 2.22 at the same time.

2.35 The insurer is not required to pay a weekly benefit, under section 2.29,

- (a) for the first week of the disability;
- (b) for any period in excess of 156 weeks unless it has been established that the injury continuously prevents the insured person from engaging in substantially all of the activities in which the person would normally engage.

Interim Payments

2.36 The insurer will pay full weekly benefits, including income benefits and benefits if no income, until the insured person receives payments that would reduce the insurer's obligation through the operation of sections 2.25 or 2.31 if an insured person has applied to receive the payments.

2.37 The insurer will pay full weekly benefits even though the insured person is entitled to, or has received, benefits under an Act administered by the Ministry of Community and Social Services for Ontario or under similar legislation in another jurisdiction.

Deductions

2.38 An insurer may deduct from any benefit payable under this Part 80 per cent of any income received or available from any occupation or employment subsequent to the accident.

Temporary Return to School or Work

2.39 Subject to section 2.38,

- 2.39.1 a person receiving a weekly benefit may attend school or accept, or return to, work at any time during the first two years following the accident for any period of time without affecting his or her weekly benefits if, as a result of the accident, he or she is unable to continue at school or in the occupation or employment;
- 2.39.2 after the two-year period, a person receiving a weekly benefit may attend school or accept, or return to, an occupation or employment for periods of up to ninety days without affecting his or her weekly benefits if he or she, as a result of the injury, is unable to continue at school or in the occupation or employment; and

- 2.39.3 the insurer is not required to pay weekly benefits under section 2.29 for any week in which the insured person attends school.

EXCEPTIONS

2.40 THE INSURER WILL NOT PAY BENEFITS under sections 2.22 or 2.29 in respect of the driver of an automobile at the time of the accident,

- (a) if, as a result of the accident, the driver is convicted of operating the automobile while his or her ability to operate the automobile was impaired by alcohol or a drug, or of driving while his or her blood alcohol level exceeded the limits permitted by law or of an indictable offence related to the operation of the automobile;
- (b) if the driver, as a result of the accident, is asked to provide a breath sample and he or she is convicted for failure to provide the sample;
- (c) if, as a result of the accident, the driver is convicted of operating an automobile while it was not insured under a motor vehicle liability Policy;
- (d) if the driver was not authorized by law to drive the automobile;
- (e) if the driver is an excluded driver under this Policy; or
- (f) if the driver knew or ought reasonably to have known that he or she was operating the automobile at the time of the accident without the owner's consent.

2.41 Section 2.40(d) does not apply to a driver who is not authorized by law to drive an automobile only by reason of a suspension of a licence for failure to pay a fine.

2.42 THE INSURER WILL NOT PAY BENEFITS under sections 2.22 or 2.29

- (a) in respect of any person who has made, or who knows of, a material misrepresentation which induced the insurer to enter into the contract of insurance or who intentionally failed to notify the insurer of a change in the risk material to the contract; or
- (b) in respect of an occupant of an automobile at the time of the accident who knew or ought reasonably to have known that the driver was operating the automobile without the owner's consent; BUT this does not prevent an excluded driver or any other occupant of an automobile driven by an excluded driver from recovering accident benefits under a motor vehicle liability Policy in respect of which the excluded driver or other occupant is a named insured.

ACCIDENTS IN QUEBEC

Benefits

2.43 For the purposes of this Part of the Policy (Accidents in Quebec), a person is insured in Quebec if the person at the time of the accident,

- (a) was authorized by law to be or to remain in Canada and was living and ordinarily present in Ontario;
- (b) met the criteria prescribed for recovery under the *Automobile Insurance Act* (Quebec);
- (c) was not the owner or driver of, or an occupant of an automobile registered in Quebec; and
- (d) was,
 - (i) an occupant of the insured automobile,
 - (ii) the named insured, his or her spouse or a dependant of either of them while the occupant of any other automobile,
 - (iii) a person who was not the occupant of an automobile and was struck by the insured automobile,
 - (iv) the named insured, his or her spouse or a dependant of either of them and was struck by any other automobile,
 - (v) if the named insured is a corporation, unincorporated association, partnership or sole proprietorship, any person for whose regular use the insured automobile was supplied, the person's spouse and any dependant of either of them who was injured,
 - (A) while the occupant of any other automobile,
 - (B) by any other automobile while not the occupant of the automobile, or
 - (vi) a person struck by an automobile that was driven by a person described in (i), (ii) or (v).

2.44 The insurer will pay with respect to a person insured in Quebec who dies or sustains physical, psychological or mental injury as a result of an accident in Quebec or who incurs a cost described in section 2.4, as the person may elect,

- (a) benefits as provided in sections 2.4 and 2.10 (Supplementary Medical, Rehabilitation, and Care Benefits), sections 2.15, 2.16, 2.17 and 2.19 (Funeral Expenses and Death Benefits) and sections 2.22 to 2.35 (Weekly Benefits); or
- (b) benefits in the same amounts and subject to the same conditions as if the person was a resident of Quebec as defined in the *Automobile Insurance Act* (Quebec) and the regulations made under that Act and was entitled to payments under that Act and those regulations.

2.45 A person who elects to claim a benefit as provided in section 2.44(a) is thereafter eligible only for benefits under the sections of this Policy that are mentioned in that section.

2.46 A person who elects to claim a benefit as provided in section 2.44(b) is thereafter ineligible for benefits under the sections of this Policy that are mentioned in section 2.44(a).

OPTIONAL BENEFITS

Options

2.47 The insurer shall pay the following optional benefits if the insured has purchased the option or options:

2.47.1 Optional Benefit 1: Increased Funeral Expenses and Death Benefits

If this option is purchased,

- (a) the maximum benefit payable under section 2.15 (Funeral Expenses) will be \$7,500; and
- (b) the maximum benefit payable under section 2.17 (Death Benefits) will be the amounts shown in that section.

2.47.2 Optional Benefit 2: Increased Weekly Income Benefit

If this option is purchased, the amount referred to in section 2.25(a) will be increased by such amount from the following as may be chosen when purchasing the option:

- 1. \$150
- 2. \$300
- 3. \$450

2.47.3 Optional Benefit 3: Increased Primary Caregiver Benefit

If this option is purchased, the benefit payable under section 2.32 will be \$100 per week per person.

2.48 Optional benefits may be purchased at any time before an accident in respect of which a claim is made.

WORKERS' COMPENSATION

Effect of Workers' Compensation Benefits

2.49 The insurer will not pay accident benefits under this Policy in respect of any insured person who, as a result of an accident, is entitled to receive benefits under any workers' compensation law or plan.

Interim Payments

2.50 Despite section 2.49, the insurer will pay full accident benefits under this Policy to a person described in that section until the resolution of any action brought by the person in any court to recover for personal injuries resulting from the accident under which the workers' compensation claim arose or until the person receives payments under a workers' compensation law or plan if,

- (a) the person makes an assignment to the insurer of any benefits under any workers' compensation law or plan to which he or she is or may become entitled as a result of the accident; and
- (b) the administrator or board responsible for the administration of the worker's compensation law or plan approves the assignment.

2.51 The amount of the no-fault benefits recoverable by the insurer under the assignment in section 2.50 shall be determined in accordance with the following formula:

$$A = T - C$$

Where

A = amount recoverable

T = total compensation for personal injury received by the insured person under all contracts of automobile insurance excluding any amount received as a special award under subsection 242d(10) or 242e(7) of the *Insurance Act* and any amount received as interest.

C = compensation for personal injury the insured person would have recovered under all contracts of automobile insurance had the no-fault benefits not been paid.

MISCELLANEOUS

Notice, Application for Benefits

2.52 The insured person or the person otherwise entitled to make a claim, shall,

- (a) give initial notice of a claim to the insurer, in writing, within thirty days from the date of the accident or as soon as practicable thereafter; and
- (b) furnish to the insurer within ninety days of the giving of the notice under clause (a) a completed application for accident benefits respecting the accident and the resulting loss.

2.53 A failure to comply with a time limit set out in section 2.52 does not invalidate a claim if the claimant has a reasonable excuse and so long as there is compliance within two years of the accident.

Certificates, Examinations

2.54 Unless waived by the insurer, the insured person or the person otherwise entitled to make a claim under sections 2.22 to 2.42 (Weekly Benefits) shall furnish a certificate from a qualified medical practitioner or psychological advisor of the insured person's choice as to the cause and nature of the injury for which the claim is made, an estimate of the duration of the disability caused by the accident and a treatment plan.

2.55 In respect of claims under sections 2.22 to 2.42 (Weekly Benefits), the insurer may, on reasonable notice, require an examination of the insured person by a qualified medical practitioner, psychological advisor or chiropractor as often as it reasonably requires, and require an autopsy of a deceased insured person in accordance with the law relating to autopsies.

2.56 The insurer will pay

- (a) the reasonable cost of examinations under section 2.54 if the cost is not payable under any insurance plan or law or under any other plan or law; and
- (b) the cost of all certificates under section 2.54 and for all examinations and certificates under section 2.55.

Payment of Claims, Refusal to Pay

2.57 Amounts payable under sections 2.4, 2.10 and 2.12 (Supplementary Medical, Rehabilitation, Care, Damage to Clothing); sections 2.15 to 2.17 (Funeral and Death Benefits); and sections 2.43 to 2.46 (Accidents in Quebec) are overdue if not mailed or otherwise delivered by the insurer within thirty days after it has received a completed application for accident benefits.

2.58 Amounts payable under sections 2.22 to 2.42 (Weekly Benefits) are overdue if not mailed or otherwise delivered by the insurer within ten days after it has received a completed application for no-fault benefits or if the insurer fails to make a payment required by section 2.59.

2.59 Payments under sections 2.22 to 2.42 (Weekly Benefits) and 2.43 to 2.46 (Accidents in Quebec) shall be mailed or otherwise delivered at least once every second week while the insurer remains liable to the insured person.

2.60 The insurer will pay interest on overdue payments from the date they become overdue at the rate of 2 per cent per month.

2.61 Section 2.59 does not apply if the insurer prepays benefits owing.

2.62 Despite sections 2.57, 2.58 and 2.59, a payment is not overdue if at the time it would have become payable, the certificate required by section 2.54 has not been received by the insurer, six weeks have passed since the insurer received the completed application for accident benefits and the insurer has not waived the requirement that the certificate be supplied.

2.63 If section 2.62 applies, the payment becomes overdue if the amount payable is not mailed or otherwise delivered by the insurer within ten days after it has received the certificate.

2.64 If an insurer refuses to pay an amount claimed in an application for accident benefits, the insurer shall forthwith give written notice to the insured person, giving the reasons for the refusal.

Restriction on Proceedings

2.65 No person may commence a mediation proceeding under section 242b of the *Insurance Act* in respect of benefits under this Part unless the requirements of sections 2.52 and 2.53 have been satisfied, and the insured has made himself or herself reasonably available for an examination under section 2.55.

Time Limit for Proceedings

2.66 A mediation proceeding under section 242b of the *Insurance Act* in respect of benefits under this Part must be commenced within two years from the insurer's refusal to pay the amount claimed in the application for accident benefits or, if the person has attended school or accepted, or returned to, an occupation or employment, as permitted by section 2.39, within two years of the insurer's refusal to pay further benefits.

Repayments to Insurer

2.67 A person must repay to the insurer any benefit received under this Part (Accident Benefits) that is paid to the person through error or fraud.

2.68 A person must repay to the insurer any benefit received under sections 2.22 or 2.29 that is paid to him or her if the person or the person in respect of whom the payment was made was disqualified from payment under section 2.40.

2.69 A person must repay to the insurer any benefit received under sections 2.22 or 2.29 to the extent of any payments received by the person that are deductible from benefits under section 2.25(b) or 2.31.

2.70 The insurer may charge interest from the day the amount owing to the insurer is determined at the bank rate on that day.

2.71 In section 2.70, "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule 1 to the *Bank Act* (Canada).

LIMITATION ON BENEFITS PAYABLE

2.72 If a person insured under this Policy is entitled to receive benefits under more than one contract providing insurance of the type set forth in this Part (Accident Benefits),

the person, any person claiming through or under the person or any person claiming under Part V of the *Family Law Act, 1986*, is entitled to recover only an amount equal to one benefit.

RELEASE

2.73 Payments made or available to a person under this Part (Accident Benefits) constitute, to the extent of such payments, a release by the person, any person claiming through or under the person or any person claiming under Part V of the *Family Law Act, 1986*, of any claim under this Part.

PART C

LOSS OF OR DAMAGE TO INSURED AUTOMOBILE

PLEASE NOTE that the **General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Part E, Sections 5.1 to 5.12, and Part F, sections 6.1 to 6.3, apply to every Part of the Policy, except as stated in those sections.**

This Part of the Policy should be read subject to these provisions.

3.1 The insurer agrees to indemnify the insured against direct and accidental loss of or damage to the automobile, including its equipment, under one or more of the following subsections:

SUBSECTION 3.1.1 — ALL PERILS — caused by any peril;

SUBSECTION 3.1.2 — COLLISION OR UPSET — caused by collision with another object or by upset of the automobile;

SUBSECTION 3.1.3 — COMPREHENSIVE — caused by any peril other than by collision with another object, or by upset of the automobile; provided that,

- (a) “object” includes an automobile to which the automobile is attached and the surface of the ground and any object in or on the surface; and
- (b) “perils” includes, but is not limited to, loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, vandalism, riot or civil commotion, and by those perils included in subsection 3.1.4 (Specified Perils); and

SUBSECTION 3.1.4 — SPECIFIED PERILS — caused by fire, lightning, theft or attempted theft, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts of aircraft, rising water, or the stranding, sinking, burn-

ing, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water.

DEDUCTIBLE

3.2 The insurer's liability shall be limited to the amount of loss or damage in excess of the sum payable by the insured, if any, stated in the applicable subsection of Part C (Loss of or Damage to the Insured Automobile) of the Certificate of Insurance, EXCEPT THAT,

- (i) each occurrence causing loss or damage referred to in this Part shall give rise to a separate claim, and the sum payable by the insured shall apply to each claim; and
- (ii) there shall be no sum payable by the insured where the loss or damage to the insured automobile is caused by fire or lightning or theft of the entire automobile and coverage is provided for these perils.

EXCLUSIONS

3.3 THE INSURER SHALL NOT BE LIABLE under this Part for loss or damage,

- (a) to tires, or consisting of or caused by mechanical fracture or breakdown of any part of the automobile, or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, BUT the insurer will be liable if the loss or damage is coincident with other loss or damage which is covered by the relevant subsection, or is caused by fire, theft or vandalism if covered by such subsection;
- (b) resulting from conversion, embe'lement, or theft by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement;
- (c) resulting from a voluntary transfer of title or ownership, whether or not induced to do so by any fraudulent scheme, trick or false pretence;
- (d) caused directly or indirectly by contamination by radioactive material;
- (e) to contents of trailers; or
- (f) to tapes and equipment for use with a tape player or recorder, when the tapes or equipment are detached from the player or recorder.

3.4 THE INSURER SHALL NOT BE LIABLE under this Part for any loss or damage suffered where the insured drives or operates the automobile or permits any other person to drive or operate the automobile,

- (a) while under the influence of intoxicating substances to such an extent as to be incapable of proper control of the automobile; or
- (b) if the driver is convicted of an offence under sections 220 (causing death by criminal negligence), 221 (causing bodily harm by criminal negligence), 249 (dangerous operation of motor vehicles), 252 (failure to stop at scene of accident) 253(a) or (b) (operation of motor vehicle when impaired or with more than 80 mg alcohol in blood), 254(5) (refusal to comply with demand for breath sample), 255(2) or (3) (causing bodily harm during operation of vehicle while impaired or over 80 mg of alcohol in blood), or 259(4) (operating a motor vehicle while disqualified from doing so) of the Criminal Code (Canada) that arose out of or was related to the operation, care or control of a vehicle or was committed by means of a vehicle, or an offence under a provision of the law in Ontario or of another jurisdiction in Canada or the United States of America that is similar to the provisions of the Criminal Code (Canada) mentioned above.

3.5 THE INSURER SHALL NOT BE LIABLE under subsections 3.1.3 (Comprehensive) OR 3.1.4 (Specified Perils) for loss or damage caused by theft by any person residing in the same dwelling premises as the insured, or by an employee of the insured engaged in the operation, maintenance or repair of the automobile, whether the theft occurs during the hours of such service or employment or not.

ADDITIONAL AGREEMENTS OF INSURED

3.6 Where a premium is specified under any subsection of section 3.1 in Part C of the Certificate of Insurance, and loss or damage arises from the insured peril, the insurer further agrees,

- 3.6.1 where the occurrence of the insured peril results in the insured incurring liability for such expenses, the insurer will pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America;
- 3.6.2 to waive subrogation against every person who, with the insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply to any person,
 - (a) having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles, or
 - (b) who has
 - (i) committed a breach of any condition of this Policy, or
 - (ii) driven or operated the automobile in the circumstances referred to in clauses 3.4(a) or (b);

- 3.6.3 to indemnify the insured and any other person who personally drives a temporary substitute automobile as defined in Part E (General Provisions) of this Policy against the liability imposed by law or assumed by the insured or the other person under any agreement for direct and accidental physical loss or damage to and arising from the care, custody and control of the automobile, provided that:
- (a) such indemnity is subject to the deductible and exclusions of each subsection;
 - (b) if the owner of the automobile has or places insurance against any peril insured by this Part, the indemnity provided under this Policy shall be limited to the sum by which the deductible, if any, of the other insurance exceeds the deductible amount stated in the applicable subsection of this Policy;
 - (c) the Additional Agreements under Part A of this Policy shall, where applicable, extend to the indemnity provided in the agreement.

Loss of Use by Theft

3.7 Where indemnity is provided under subsections 3.1.1, 3.1.3 or 3.1.4 of this Part, if the entire automobile is stolen, the insurer agrees to reimburse the insured for expense incurred for the rental of a substitute automobile including taxicabs and public means of transportation, subject to the following conditions:

- (a) the amount payable will not exceed \$30.00 for any one day, nor total more than \$900.00; and
- (b) reimbursement is limited to such expense incurred during the period commencing seventy-two hours after the theft has been reported to the insurer or the police, and terminating, regardless of the expiration of the Policy period, either upon the date of the completion of repairs to or the replacement of the property lost or damaged, or upon such earlier date as the insurer tenders settlement for the loss or damage caused by the theft.

PART D

UNINSURED AUTOMOBILE COVERAGE

PLEASE NOTE that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Part E, Sections 5.1 to 5.12, and Part F, sections 6.1 to 6.3, apply to every Part of the Policy, except as stated in those sections.

This Part of the Policy should be read subject to these provisions.

- 4.1** The insurer agrees to pay all sums that,

- 4.1.1 a person insured under the Policy is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury resulting from an accident involving an automobile;
- 4.1.2 any person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the Policy resulting from an accident involving an automobile; and
- 4.1.3 a person insured under the Policy is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile.

DEFINITIONS

4.2 For the purposes of this Part,

- 4.2.1 “insured automobile” means the described automobile, or as defined under the Policy;
- 4.2.2 “person insured under the policy” means,
 - (a) in respect of a claim for damage to the insured automobile, the owner of the automobile,
 - (b) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents,
 - (c) in respect of a claim for bodily injury or death,
 - (i) any person while an occupant of the insured automobile,
 - (ii) the insured and his or her spouse and any dependent relative of either,
 - 1. while an occupant of an uninsured automobile, or
 - 2. while not the occupant of an automobile or of rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,
 - (iii) if the insured is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured for whose regular use the insured automobile is furnished, and his or her spouse and any dependent relative of the person or the spouse,
 - 1. while an occupant of an uninsured automobile, or
 - 2. while not the occupant of an automobile or of rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,

where such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;

PROVIDED THAT

where the Policy has been endorsed to grant permission to rent or lease the described automobile for a period in excess of 30 days, any reference to the named insured shall be construed as a reference to the lessee specified in that endorsement.

- 4.2.3 “unidentified automobile” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;
- 4.2.4 “uninsured automobile” means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or his or her spouse.

QUALIFICATION OF DEPENDENT RELATIVE

4.3 Where a dependent relative referred to in section 4.2.2(c) is the owner of an automobile insured under a contract, or sustains bodily injury or dies as the result of an accident while the occupant of his or her own uninsured automobile, such dependent relative shall be deemed not to be a dependent relative for the purposes of this Part.

4.4 The following terms, conditions, provisions, exclusions and limits prescribed by the regulations made under subsection 231(4) of the *Insurance Act* apply to the coverage under this Part.

LIMITS AND EXCLUSIONS

4.5 THE INSURER SHALL NOT BE LIABLE to make any payment,

- (a) for any amount in excess of the minimum limits for automobile liability insurance in the jurisdiction in which the accident occurs regardless of the number of persons injured or killed or the damage to the automobile and contents, and in no event shall the insurer be liable for any amount in excess of the minimum limits set out in section 219 of the *Insurance Act*;
- (b) where a person insured under the Policy is entitled to recover money under any valid Policy of insurance other than money payable on death, except for the difference between such entitlement and the relevant minimum limits determined under paragraph (a);
- (c) where the person insured under the Policy is entitled to recover money under the third party liability section of a motor vehicle liability Policy;

- (d) to any person involved in an accident in a jurisdiction in which a valid claim may be made for such payment against an unsatisfied judgment or similar fund;
- (e) for any loss or damage caused directly or indirectly by radioactive material;
- (f) in respect of damages for accidental damage to the insured automobile and its contents, for the first \$100 of any loss in any one occurrence nor any amount in excess of \$25,000; or
- (g) for loss or damage referred to in section 4.1 that occurs while the insured automobile is being operated by an excluded driver.

4.6 Where by reason of any one accident, liability results from bodily injury or death and from damage to the insured automobile or its contents,

- (a) claims arising out of bodily injury or death have priority to the extent of 95 percent of the amount payable over claims arising out of damage to the insured automobile and its contents; and
- (b) claims arising out of damage to the insured automobile and its contents have priority to the extent of 5 percent over claims arising out of bodily injury or death.

ACCIDENTS INVOLVING UNIDENTIFIED AUTOMOBILES

4.7 This section applies if an unidentified automobile has caused bodily injury or death to a person insured under the Policy.

- 4.7.1 The person insured under the Policy, or his or her representative, shall report the accident to a police officer, peace officer or judicial officer within twenty-four hours after it occurs or as soon as practicable after that time.
- 4.7.2 The person, or his or her representative, shall give the insurer a written statement within thirty days after the accident occurs or as soon as is practicable after that date setting out the details of the accident.
- 4.7.3 The statement shall state whether the accident was caused by a person whose identity cannot be ascertained and whether the person insured under the Policy was injured or killed and property was damaged in the accident.
- 4.7.4 The person, or his or her representative, shall make available for inspection by the insurer upon request the automobile in which the person was an occupant when the accident occurred.

DETERMINATION OF LEGAL LIABILITY AND AMOUNT OF DAMAGES

4.8 The determination as to whether the person insured under the Policy is legally entitled to recover damages, and, if so entitled, the amount thereof shall be determined,

- (a) by agreement between the person insured under the Policy and the insurer;
- (b) at the request of the person insured under the Policy, and with the consent of the insurer, by arbitration by some person to be chosen by both parties, or if they cannot agree on one person, then by two persons, one to be chosen by the person insured under the Policy and the other by the insurer and a third person to be appointed by the persons so chosen; or
- (c) by a court of competent jurisdiction in Ontario in an action brought against the insurer by the person insured under the Policy, and unless the determination has been previously made in a contested action by a court of competent jurisdiction in Ontario, the insurer may include in its defence the determination of liability and the amount thereof.

4.9 The *Arbitrations Act* applies to every arbitration under clause 4.8(b).

NOTICE OF LEGAL ACTION

4.10 Where the person insured under the Policy or his or her representative commences a legal action for damages against any other person owning or operating an automobile involved in the accident, a copy of the initiating process shall be delivered or sent by registered mail immediately to the chief agent or head office of the insurer in Ontario.

4.11 Subject to sections 4.5 and 4.6, where the person insured under the Policy or his or her representative obtains a judgment against the other person referred to in section 4.10 but is unable to recover, or to recover fully the amount of that judgment, the insurer shall on request pay the amount of that judgment or, as the case may be, the difference between what the person has recovered under that judgment and the amount of that judgment.

4.12 Before making any such payment, the insurer may require that the person insured under the Policy or his or her representative assign the judgment, or the balance of the judgment, as the case may be, to the insurer and the insurer shall account to the person insured under the Policy for any recovery it makes under that judgment for any amount in excess of what it has paid to that person and its costs.

NOTICE AND PROOF OF CLAIM

4.13 A person entitled to make a claim in respect of the bodily injury or death of a person insured under the Policy shall do so in accordance with this section.

- 4.13.1 The claimant shall give the insurer written notice of the claim within thirty days after the accident, or as soon as is practicable after that date.
- 4.13.2 The claimant shall give the insurer, within ninety days after the accident, or as soon as is practicable after that date, such proof as is reasonably possible in the circumstances of the accident, the resulting loss and the claim.

4.13.3 The claimant shall provide the insurer on request with a certificate of the medical or psychological advisor of the person insured under the Policy stating the cause of the injury or death, and, if applicable, the nature of the injury and the expected duration of any disability.

4.13.4 The claimant shall provide the insurer with the details of any other insurance Policy, other than a life insurance Policy, to which the claimant may have recourse.

4.14 Statutory condition 4 of subsection 207(2) of the *Insurance Act* applies, with necessary modifications, with respect to a claim for damage to the insured automobile or its contents.

MEDICAL EXAMINATIONS

4.15 On reasonable notice, the insurer may require the person insured under the Policy to undergo an examination by a qualified medical or psychological advisor as often as the insurer reasonably requires.

4.16 The insurer may require an autopsy, in accordance with the law relating to autopsies, of a deceased person insured under the Policy.

4.17 The insurer will pay for an examination or autopsy that it requires under sections 4.15 and 4.16.

4.18 The insurer shall provide a copy of the medical report or an autopsy obtained under sections 4.15 or 4.16 to a person making a claim under the Policy, or to the person's representatives, upon request.

LIMITATIONS

4.19 No person is entitled to bring an action to recover the amount of a claim provided for under the Policy, as required by subsection 231(1) of the *Insurance Act*, unless the requirements of this Part with respect to the claim have been complied with.

4.20 An action or proceeding against the insurer in respect of loss or damage to the insured automobile or its contents shall be commenced within one year next after the loss or damage occurs.

4.21 An action or proceeding against the insurer in respect of bodily injury or death, or in respect of loss or damage to property other than the insured automobile or its contents, shall be commenced within two years after the cause of action arises.

LIMIT ON AMOUNT PAYABLE

4.22 If a person insured under the Policy is entitled to receive benefits under more than one contract providing insurance of the type set forth in subsection 231(1) of the

Insurance Act, the person, any person claiming through or under the person or any person claiming under Part V of the *Family Law Act, 1986* is entitled to recover only an amount equal to one benefit.

PART E

GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS

PLEASE NOTE that the **General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in this Part, and Part F, sections 6.1 to 6.3, of the Policy apply to every Part of the Policy, except as stated in this Part and Part F.**

Each Part of the Policy should be read subject to these provisions.

TERRITORY

5.1 This Policy applies to loss or damage to persons or property caused by an incident that arises out of the ownership, operation or use of an automobile and that occurs in Canada, the United States of America or on a vessel travelling between ports of those countries.

DEFINITIONS

5.2 In this Policy:

- 5.2.1** “accident benefits” means the benefits provided in the regulations made under section 232 of the *Insurance Act* entitled “No-Fault Benefits Schedule”.

AUTOMOBILE DEFINED

5.2.2 “the automobile”, except where otherwise stated, means:

for purposes of Parts A (Third Party Liability), B (Accident Benefits), C (Loss of or Damage to Insured Automobile) and D (Uninsured Automobile Coverage):

- (i) the **DESCRIBED AUTOMOBILE**: an automobile or trailer described in this Policy;
- (ii) a **NEWLY ACQUIRED AUTOMOBILE**: an automobile or trailer which is acquired by the insured as owner and which is not insured under any other Policy, if the following are complied with:

- (a) either it replaces an automobile described in the application, or, if it is an additional automobile, the insurer insures all automobiles owned by the insured at the date of delivery under the Part of the Policy under which the claim is made;
- (b) the insured notifies the insurer of the acquisition within fourteen days following the date of its delivery to him or her; and
- (c) the insured pays any additional premium required;

PROVIDED HOWEVER that this Policy shall not apply if the insured is engaged in the business of selling automobiles;

and for purposes of Parts A (Third Party Liability), B (Accident Benefits) and D (Uninsured Automobile Coverage):

- (iii) a **TEMPORARY SUBSTITUTE AUTOMOBILE**: an automobile which is not owned by the insured or by any person residing in the same dwelling premises as the insured, while temporarily used as a substitute for the described automobile which is not in use by any person insured by this Policy, because of breakdown, repair, servicing, loss, destruction or sale of the described automobile;
- (iv) any **OTHER AUTOMOBILE**: other than the described automobile, which is of a gross vehicle weight of 4,500 kilograms or less, while personally driven by the insured or by his or her spouse if residing in the same dwelling premises as the insured, provided that
 - (a) the described automobile is of a gross vehicle weight of 4,500 kilograms or less;
 - (b) the insured is an individual or are spouses of each other;
 - (c) neither the insured nor his or her spouse is driving the automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
 - (d) **EXCEPT for the purposes of Part B (Accident Benefits)**, the other automobile is not owned or regularly used by the insured or by any person residing in the same dwelling premises as the insured;
EXCEPT THAT for the purposes of Parts A (Third Party Liability) and D (Uninsured Automobile Coverage), this exclusion does not apply if the named insured under this Policy personally drives the other automobile while being an excluded driver under the Policy of that automobile;

- (e) **EXCEPT for the purposes of Part B (Accident Benefits)**, the other automobile is not owned, hired or leased by an employer of the insured or by an employer of any person residing in the same dwelling premises as the insured;
EXCEPT THAT for the purposes of Parts A (Third Party Liability) and D (Uninsured Automobile Coverage), this exclusion does not apply if the named insured under this Policy personally drives the other automobile while being an excluded driver under the Policy of that automobile;
- (f) the other automobile is not used for carrying passengers for compensation or hire or for commercial delivery at the time of the loss;
- (v) If the insured is a corporation, unincorporated association, partnership, sole proprietorship or other entity, **any automobile, other than the described automobile**, of a gross vehicle weight of 4,500 kilograms or less, while personally driven by the employee or partner for whose regular use the described automobile is supplied, or by his or her spouse if residing in the same dwelling premises as the employee or partner, provided that,
 - (a) neither the employee or partner or his or her spouse is the owner of an automobile of a gross vehicle weight of 4,500 kilograms or less and is insured in accordance with the requirements of the *Compulsory Automobile Insurance Act*;
 - (b) the described automobile is of a gross vehicle weight of 4,500 kilograms or less;
 - (c) neither the employee, partner or spouse is driving the automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
 - (d) the other automobile is not owned, hired or leased or regularly or frequently used by the insured or the employee or by any partner of the insured or by any person residing in the same dwelling premises as any of these persons; and
 - (e) the other automobile is not being used for carrying passengers for compensation or hire or commercial delivery at the time of the loss;
- (vi) a **TRAILER**; and this includes,

- (a) for the purposes of Part A (Third Party Liability), Part B (Accident Benefits), and Part D (Uninsured Automobile Coverage), EXCLUDING section 1.2 (Direct Compensation — Property Damage) of Part A, any trailer used in connection with the automobile; and
- (b) for the purposes of section 1.2 (Direct Compensation — Property Damage) of Part A **only**, any trailer owned by the insured and not described in this Policy, while attached to an automobile of a gross vehicle weight of 4,500 kilograms or less, or while not attached to an automobile, provided such trailer is generally used with an automobile of a gross vehicle weight of 4,500 kilograms or less; BUT this shall not include a trailer designed or used for carrying passengers or for dwelling or commercial purposes.

5.2.3 “occupant”, in respect of an automobile, means,

- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile.

5.2.4 “spouse” means either of a man and a woman who,

- (a) are married to each other,
- (b) have together in good faith entered into a marriage,
- (c) are not married to each other and have cohabited continuously for a period of not less than three years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

NOTICE TO INSURER

5.3 The insured agrees to provide to the insurer written notice, with all available particulars, of any incident involving the insured automobile which must be reported to the police under the *Highway Traffic Act*, within seven days of the incident, but if the insured is unable because of incapacity to give such notice, as soon as possible thereafter.

PAYMENT OF PROPERTY DAMAGE

5.4 If section 230a of the *Insurance Act* (Direct Compensation — Property Damage) applies, the following rules apply to the payment of indemnity provided under section 1.2 of this Policy:

1. The amount payable shall be calculated in accordance with the following formula:

$$A = (P - C) \times D$$

Where

A = amount recoverable under Part A (Third Party Liability)

P = total amount of loss for damage to the insured automobile, its contents and loss of its use

C = the amount which was paid to the insured under Part C (Loss of or Damage to Insured Automobile) and endorsements applicable to Part C, on an actual cash value basis

D = the degree to which the insured is not at fault as determined under the Fault Determination Rules made under section 230a of the Act.

2. Where coverages under Parts A (Third Party Liability) and C (Loss of or Damage to Insured Automobile) are provided under different policies, the amount payable by the insurer providing the coverage under Part A (Third Party Liability) shall be calculated in accordance with the formula in rule 1, substituting the amount that is payable to the insured under Part C of the Policy and applicable endorsements which provide that coverage.

CONSENT

5.5 An occupant of an automobile which is being operated without the consent of the owner or by an excluded driver shall not be entitled to indemnity or payment under this Policy except as provided in Part B (Accident Benefits).

TWO OR MORE AUTOMOBILES

5.6 When two or more automobiles are described in this Policy,

- (a) with respect to the use or operation of the described automobiles, each automobile shall be deemed to be insured under a separate Policy;
- (b) with respect to the use or operation of an automobile not owned by the insured, the limit of the insurer's liability shall not exceed the highest limit applicable to any one described automobile.

5.7 When the insured owns two or more automobiles which are insured as described automobiles under two or more automobile insurance policies, the limit of the insurer under this Policy with respect to the use or operation of an automobile not owned by the insured shall not exceed the proportion that the highest limit applicable to any one automobile described in this Policy bears to the sum of the highest limits applicable under each Policy, and in no event shall exceed such proportion of the highest limit applicable to any one automobile under any Policy.

5.8 An automobile and one or more trailers attached to it shall be held to be one automobile with respect to the limit of liability under Parts A (Third Party Liability), B (Accident Benefits) and D (Uninsured Automobile Coverage) of this Policy, and separate

automobiles with respect to the limits of liability, including any deductible provisions, under Part C (Loss of or Damage to the Insured Automobile).

5.9 Despite section 5.8, in any accident involving two or more automobiles attached to each other and owned by different persons, the insurer of each automobile shall indemnify its insured for damages in accordance with sections 1.2 and 5.4.

EXCLUSIONS

GARAGE PERSONNEL EXCLUDED

5.10 No person who is engaged in the business of selling, repairing, maintaining, storing, servicing or parking automobiles shall be entitled to indemnity or payment under this Policy for any loss, damage, injury or death sustained while engaged in the use or operation of or while working upon the automobile in the course of that business, or while so engaged is an occupant of the described automobile or a newly acquired automobile as defined in this Policy, unless the person is the owner of the automobile.

WAR RISKS EXCLUDED

5.11 The insurer shall not be liable under Parts B (Accident Benefits), C (Loss of or Damage to Insured Automobile) or D (Uninsured Automobile Coverage) of this Policy for any loss, damage, injury or death caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operation of armed forces while engaged in hostilities, whether war is declared or not.

EXCLUDED USES

5.12 THE INSURER SHALL NOT BE LIABLE while,

- (a) the automobile is rented or leased to another; provided that the use by an employee of the employee's automobile on the business of the employer and for which the employee is paid shall not be deemed the renting or leasing of the automobile to another;
- (b) except as provided in Part B (Accident Benefits), the automobile is used to carry explosives, or radioactive material for research, education, development or industrial purposes, or for purposes incidental to these uses;
- (c) the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire; provided that the following uses of the automobile by the insured shall be deemed not to be the carrying of passengers for compensation or hire:
 - (i) carrying another person, where the other person reciprocates;
 - (ii) carrying another person occasionally and infrequently, who shares the cost of the trip;

- (iii) carrying a domestic servant of the insured or of his or her spouse;
- (iv) carrying clients or customers or prospective clients or customers; or
- (v) transporting children occasionally and infrequently to or from school, or school activities conducted within the educational program.

PART F

PLEASE NOTE that the **General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Part E, Sections 5.1 to 5.12, and in this Part apply to every Part of the Policy, except as stated in Part E and this Part.**

Each Part of the Policy should be read subject to these provisions.

STATUTORY CONDITIONS

6.1 ONLY CONDITIONS 1, 8 AND 9 APPLY TO PART B (ACCIDENT BENEFITS).

6.2 In these statutory conditions, unless the context otherwise requires, the word “insured” means a person insured by this Policy whether named or not.

Statutory Conditions

6.3 Material Change in Risk

1.(1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within his or her knowledge.

(2) Without restricting the generality of the foregoing, the words “change in the risk material to the contract” include:

- (a) any change in the insurable interest of the insured named in this Policy in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy Act* (Canada); and in respect of insurance against loss of or damage to the automobile,
- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this Policy;
- (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this Policy or any portion thereof.

No-Fault Benefits Protected

1a. Despite a failure to comply with statutory condition 1(1), a person is entitled to such no-fault benefits as are set out in the No-Fault Benefits Schedule (Part B of this policy).

Refund of Premium Overpayment

1b. (1) Where the insured has been incorrectly classified with respect to a risk exposure under this Policy under the risk classification scheme used by the insurer or that the insurer is required by law to use, the insurer shall make the necessary correction, and shall refund to the insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made rounded to the next highest number if the bank rate includes a fraction.

Definition

(2) In this statutory condition, "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

Monthly Payments

1c. Unless otherwise provided by the regulations under the *Insurance Act*, the insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The insurer may charge interest not exceeding the rate set out in the regulations.

Prohibited Use

2. (1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.

(2) The insured shall not use or permit the use of the automobile in a race or speed test or for any illicit or prohibited trade or transportation.

Requirements Where Loss or Damage to Persons or Property

3. (1) The insured shall,

- (a) give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
- (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this Policy; and
- (c) forward immediately to the insurer every letter, document, advice or writ received by him or her from or on behalf of the claimant.

(2) The insured shall not,

- (a) voluntarily assume any liability or settle any claim except at his or her own cost; or
- (b) interfere in any negotiations for settlement or in any legal proceeding.

(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Requirements Where Loss or Damage to Automobile

4. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this Policy,

- (a) give notice thereof in writing to the insurer with the fullest information obtainable at the time;
- (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
- (c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his or her knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

(2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.

(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,

- (a) without the written consent of the insurer; or
- (b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

Examination of Insured

(4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in his or her possession or control that relate to the matters in question, and the insured shall permit extracts and copies thereof to be made.

Insurer Liable for Cash Value of Automobile

(5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

Repair or Replacement

(6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

No Abandonment, Salvage

(7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

Time Limit

4a. The notice required by statutory conditions 3 and 4 shall be given to the insurer within 7 days of the incident but if the insured is unable because of incapacity to give the notice within seven days of the incident, the insured shall comply as soon as possible thereafter.

Inspection of Automobile

5. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

Time and Manner of Payment of Insurance Money

6. (1) The insurer shall pay the insurance money for which it is liable under this Policy within sixty days after the proof of loss has been received by it.

When Action Can Be Brought

(2) The insured shall not bring an action to recover the amount of a claim under this Policy unless the requirements of statutory conditions 3 and 4 are complied with.

Limitation of Actions

(3) Every action or proceeding against the insurer under this Policy in respect of loss or damage to the automobile or its contents shall be commenced within one year next

after the happening of the loss and not afterwards, and in respect of loss or damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

Who May Give Notice and Proofs of Claim

7. Notice of claim may be given and proofs of claim may be made by the agent of the insured in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination

8. (1) This contract may be terminated,

- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;
- (b) by the insured at any time on request.

(2) Where this contract is terminated by the insurer,

- (a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but in no event shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and
- (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order or cheque payable at par.

(5) The fifteen days mentioned in clause (1)(a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Notice

9. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written notice may be given to the insured named in this contract by letter personally delivered to him or her or by registered mail addressed to the insured at his or her latest post office address as

notified to the insurer. In this condition, the expression “registered” means registered in or outside Canada.

ONTARIO STANDARD AUTOMOBILE POLICY

(S.P.F. 1)

(Owner's Form)

PLEASE NOTE: This Ontario Standard Automobile Policy — Owner's Form (S.P.F. No. 1) is superseded by the Ontario Automobile Policy — Owner's Form (O.P.F. 1), *supra*, as of June 22, 1990.

INSURING AGREEMENTS

Now therefore in consideration of the payment of the premium specified and of the statements contained in the application and subject to the limits, terms, conditions, provisions, definitions and exclusions herein stated and subject always to the condition that the insurer shall be liable only under the section(s) or subsection(s) of the following Insuring Agreements A, B, C for which a premium is specified in item 4 of the application and no other

SECTION A — THIRD PARTY LIABILITY

The insurer agrees to indemnify the insured and, in the same manner and to the same extent as if named herein as the insured, every other person who with his consent personally drives the automobile, or personally operates any part thereof, against the liability imposed by law upon the insured or upon any such other person for loss or damage arising from the ownership, use or operation of the automobile and resulting from

BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY

The Insurer shall not be liable under this section,

- (a) — ~~deleted~~
- (b) — ~~deleted~~
- (c) — ~~deleted~~
- (d) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by, or in the care, custody or control of any person insured by this section;
or
- (e) — ~~deleted~~
- (f) — ~~deleted~~
- (g) for any amount in excess of the limit(s) stated in section A of item 4 of the application, and expenditures provided for in the Additional Agreements of this section; subject always to the provisions of the section of the Insurance Act (Automobile Insurance Part) relating to the nuclear energy hazard; or

- (h) for any liability arising from contamination of property carried in the automobile.

**See also General Provisions, Definitions, Exclusions and
Statutory Conditions of this Policy**

ADDITIONAL AGREEMENTS OF INSURER

Where indemnity is provided by this section the Insurer shall,

- (1) upon receipt of notice of loss or damage caused to persons or property, serve any person insured by this policy by such investigation thereof, or by such negotiations with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer; and
- (2) defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action which may at any time be brought against such person on account of such loss or damage to persons or property; and
- (3) pay all costs against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer's liability; and
- (4) in case the injury be to a person, reimburse any person insured by this policy for outlay for such medical aid as may be immediately necessary at the time of such injury; and
- (5) be liable up to the minimum limit(s) prescribed for that province or territory of Canada in which the accident occurred, if that limit(s) is higher than the limit(s) stated in section A of item 4 of the application; and
- (6) not set up any defense to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province or territory of Canada in which the accident occurred.

AGREEMENTS OF THE INSURED

Where indemnity is provided by this section, every person insured by this policy

- (a) by the acceptance of this policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the insured arising out of the ownership, use or operation of the automobile;
- (b) shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the insurer would not otherwise be liable to pay under this policy.

SECTION B — ACCIDENT BENEFITS

The Insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile:

SUBSECTION 1 — MEDICAL, REHABILITATION
AND FUNERAL EXPENSES

- (1) All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, chiropractic, hospital,, professional nursing and ambulance service and for any other service within the meaning of insured services under **The Health Insurance Act** and for such other services and supplies which are, in the opinion of the physician of the insured person's choice and that of the insurer's medical advisor, essential for the treatment, occupational retraining or rehabilitation of said person, to the limit of \$25,000 per person.
- (2) Funeral expenses incurred up to the amount of \$1,000 in respect of the death of any one person.

The Insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.

SUBSECTION 2 — DEATH BENEFITS AND LOSS OF
INCOME PAYMENTS

Part I — Death Benefits

A. Subject to the provisions of this Part, for death that ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous disability during that period, a payment — based on the status at the date of the accident of the deceased in a household where a spouse or dependants survive — of the following amounts:

Head of the Household	\$10,000
Spouse of the Head of the Household	10,000
Dependant within the meaning of sub-subparagraph (b) of subparagraph 3 of paragraph B	2,000

In addition, with respect to death of the head of the household, where there are two or more survivors — spouse or dependants — the principal sum payable is increased \$1,000 for each survivor other than the first.

B. For the purposes of this Part,

- (1) “Spouse of the head of the household” means the spouse with the lesser income from employment in the twelve months preceeding the date of the accident.
- (2) “Spouse” means either of a man and woman who,
 - (a) are married to each other;
 - (b) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or
 - (c) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year,

and includes,

- (d) either of a man and woman not being married to each other who have cohabited,
 - (i) continuously for a period of not less than five years, or
 - (ii) in a relationship of some permanence where there is a child born of whom they are the natural parents,and have so cohabited with the preceding year.

(3) “Dependant” means,

- (a) the spouse of the head of the household who resides with the head of the household;
- (b) a person,
 - (i) under the age of 18 years who resides with and is principally dependent upon the head of the household or the spouse of the head of the household for financial support,
 - (ii) 18 years of age or over who, because of mental or physical infirmity, is principally dependent upon the head of the household or the spouse of the head of the household for financial support, or
 - (iii) 18 years of age or over who, because of full-time attendance at a school, college or university is principally dependent upon the head of the household or the spouses of the head of the household for financial support, or
- (c) a parent or relative,
 - (i) of the head of the household,
or
 - (ii) of the spouse of the head of the household, residing in the same dwelling premises and principally dependent upon the head of the household or the spouse of the head of the household for financial support.

- (4) The total amount payable shall be paid to a person who is the head of the household or the spouse of the head of the household, as the case may be, if that person survives the deceased by at least 30 days.
- (5) The total amount payable with respect to death where no head of the household or spouse survives the deceased by at least 30 days shall be divided equally among the surviving dependants.
- (6) No amount is payable on death, other than incurred funeral expenses, if no head of the household or dependant survives the deceased by at least 30 days.

Part II — Loss of Income

Subject to the provision of this Part, a weekly payment for the loss of income from employment for the period during which the insured person suffers substantial inability to perform the essential duties of this occupation or employment, provided,

- (a) such person was employed at the date of the accident;
- (b) within 30 days from the date of the accident the insured person suffers substantial inability to perform the essential duties of his occupation or employment;
- (c) no payments shall be made for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to make such weekly payments for the duration of such inability to perform the essential duties.

Amount of Weekly Payment — The amount of a weekly payment shall be the lesser of,

- (a) \$140 per week; or
- (b) 80 percent of the insured person's gross weekly income from employment, less any payments for loss of income from employment received by or available to such person under,
 - (i) the laws of any jurisdiction,
 - (ii) wage or salary continuation plans available to the person by reason of his employment, and
 - (iii) Part III of this Subsection 2,

but no deduction shall be made for any increase in such payment due to a cost of living adjustment subsequent to the insured person's substantial inability to perform the essential duties of his occupation or employment or for the first two weeks of such substantial inability.

For the purposes of this Part,

- (1) there shall be deducted from an insured person's gross weekly income any payments received by or available to him from part-time or other employment or occupation subsequent to the date of the accident;
- (2) a principal unpaid housekeeper residing in the household not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of \$70 per week for not more than 12 weeks;
- (3) a person shall be deemed to be employed,
 - (a) if actively engaged in an occupation or employment for wages or profit at the date of the accident; or
 - (b) if 18 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months;

- (4) a person receiving a weekly payment who, within 30 days of resuming his occupation or employment is unable to continue such occupation or employment as a result of such injury, is not precluded from receiving further weekly payments;
- (5) except for the first two weeks of disability, where the payments for loss of income payable hereunder, together with payments for loss of income under another contract of insurance other than a contract of insurance relating to any wage or salary continuation plan available to an insured person by reason of his employment, exceed the actual loss of income of the insured person, the Insurer is liable only for that proportion of the payments for loss of income stated in this policy that the actual loss of income of the person insured bears to the aggregate of the payments for loss of income payable under all such contracts.

Part III — Supplemental Benefits Respecting Accidents Occurring in Quebec

A. For the purposes of this Part,

- (a) “accident” means an event occurring in Quebec resulting in damage caused by an automobile, or by the use of an automobile, or by the load of an automobile, including damage caused by a trailer;
- (b) “bodily injury” means physical, psychological or mental injury including death as well as damage to the clothing worn by the victim at the time of the accident;
- (c) “resident of Ontario” means any person,
 - (i) who is authorized by law to be or to remain in Canada and is living and ordinarily present in Ontario, and
 - (ii) who meets the criteria prescribed in Division 11 of O.C. 374-78 made under the **Automobile Insurance Act** (Quebec), which apply with necessary modifications.but does not include a person,
 - (iii) who is merely touring, passing through or visiting Ontario, or
 - (iv) who is, at the time of an accident in Quebec, the owner or driver of, or a passenger in, an automobile registered in Quebec;
- (d) “person insured in Quebec” means a resident of Ontario who is,
 - (i) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy,
 - (ii) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile,
 - (iii) any person, not the occupant of an automobile, who is struck by the described automobile or a newly acquired or temporary substitute automobile as defined in this policy,

- (iv) the named insured, if an individual, and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile who is struck by any other automobile,
- (v) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employees or partner, while an occupant of any other automobile,
- (vi) any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile who is struck by any other automobile, and
- (vii) any other person who is,
 - a. the occupant of an automobile, or
 - b. not being the occupant of an automobile, is struck by an automobile, driven by a person insured in Quebec as defined in sub-subparagraphs i to vi of this subparagraph.

B. With respect to bodily injury, as a result of an accident, to a person insured in Quebec the Insurer agrees to make payments under this Part in the same amount and form and subject to the same conditions as if such person were a resident of Quebec as defined in the **Automobile Insurance Act** (Quebec) and the regulations made under that Act and entitled to payments under that Act and those regulations.

SUBSECTION 3 — UNINSURED MOTORIST COVER

All sums that

- (a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
- (b) any person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and
- (c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile.

1. Definitions:

For purposes of this subsection,

- (a) “insured automobile” means the automobile as defined or described under the contract;
- (b) “person insured under the contract” means,
- (i) in respect of a claim for damage to the insured automobile, the owner of the automobile,
 - (ii) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents,
 - (iii) in respect of a claim for bodily injuries or death,
 - a. any person while an occupant of the insured automobile.
 - b. the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either,
 - (1) while an occupant of an uninsured automobile, or
 - (2) while not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,
 - c. if the insured is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured for whose regular use the insured automobile is furnished, and; if residing in the same dwelling premises as such person, his or her spouse and any dependent relative of the person or the spouse,
 - (1) while an occupant of an uninsured automobile, or
 - (2) while not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,
- where such director, officer, employee or partner of his or her spouse is not the owner of an automobile insured under a contract;
- (c) “unidentified automobile” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;
- (d) “uninsured automobile” means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or his or her spouse.

2. Qualification of Dependent Relative

Where a dependent relative referred to in subparagraph (iii) of paragraph (b) of Clause 1,

- (a) is the owner of an automobile insured under a contract; or
- (b) sustains bodily injuries or dies as the result of accident while the occupant of his own uninsured automobile,

such relative shall be deemed not to be a dependent relative for the purposes of this subsection 3.

The following terms, conditions, provisions, exclusions and limits prescribed by the Regulations made under Section 231(4) of The Insurance Act apply to the coverage under this Subsection of this Section B.

3. Limits and Exclusions

- (1) The Insurer shall not be liable to make any payment,
 - (a) for any amount in excess of the minimum limits for automobile liability insurance in the jurisdiction in which the accident occurs regardless of the number of persons injured or killed or the damage to the automobile and contents, and in no event shall the Insurer be liable for any amount in excess of the minimum limits set out in section 219 of **The Insurance Act**;
 - (b) where a person insured under the contract is entitled to recover money under any valid policy of insurance other than money payable on death, except for the difference between such entitlement and the relevant minimum limits determined under paragraph (a);
 - (c) where the person insured under the contract is entitled to recover money under the third party liability section of a motor vehicle liability policy;
 - (d) to any person involved in an accident in a jurisdiction in which a valid claim may be made for such payment against an unsatisfied judgment or similar fund;
 - (e) for any loss or damage caused directly or indirectly by radioactive material; or
 - (f) in respect of damages for accidental damage to the insured automobile and its contents, for the first \$100 of any loss in any one occurrence nor any amount in excess of \$25,000.
- (2) Where by reason of any one accident, liability results from bodily injury or death and from damage to the insured automobile or its contents,
 - (a) claims arising out of bodily injury or death have priority to the extent of 95 per cent of the amount payable over claims arising out of damage to the insured automobile and its contents; and
 - (b) claims arising out of damage to the insured automobile and its contents have priority to the extent of 5 per cent over claims arising out of bodily injury or death.

4. Accidents Involving Unidentified Automobiles

Where an unidentified automobile has caused bodily injury or death to a person insured under the contract,

- (a) the person insured under the contract, or someone on his behalf, shall report the accident within twenty-four hours, or as soon as practicable thereafter, to a police, peace or judicial officer or to an administrator of motor vehicle laws and shall file with the Insurer within thirty days, or as soon as practicable thereafter, a written statement that the person insured under the contract or his representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity cannot be ascertained and setting forth the facts in support thereof, and
- (b) at the request of the Insurer, the person insured under the contract or his representative referred to in paragraph (a) shall make available for inspection the automobile of which the person insured under the contract was an occupant at the time of the accident.

5. Determination of Legal Liability and Amount of Damages

- (1) The determination as to whether the person insured under the contract is legally entitled to recover damages and, if so entitled, the amount thereof shall be determined,
 - (a) by agreement between the person insured under the contract and the Insurer;
 - (b) at the request of the person insured under the contract, and with the consent of the Insurer, by arbitration by some person to be chosen by both parties, or if they cannot agree on one person, then by two persons, one to be chosen by the person insured under the contract and the other by the Insurer and a third person to be appointed by the persons so chosen; or
 - (c) by a court of competent jurisdiction in Ontario in an action brought against the Insurer by the person insured under the contract, and unless the determination has been previously made in a contested action by a court of competent jurisdiction in Ontario, the Insurer may include in its defence the determination of liability and the amount thereof.
- (2) The Arbitrations Act applies to every arbitration under paragraph (b) of subclause (1) of this Clause.

6. Notice of Legal Action

- (1) Where the person insured under the contract or his representative commences a legal action for damages against any other person owning or operating an automobile involved in the accident, a copy of the writ of summons or other proceeding shall be delivered or sent by registered mail immediately to the chief agency or head office of the Insurer in Ontario.
- (2) Subject to Clause 3 of this Subsection 3, where the person insured under the contract or his representative obtains a judgment against the other person referred to in subclause (1) of this clause but is unable to recover, or to recover fully the amount of that judgment, the Insurer shall, on request, pay the amount of that judgment or, as the case may be, the difference between what he has recovered under that judgment and the amount of that judgment.

- (3) Before making any payment under subclause (2) of this clause, the Insurer may require that the person insured under the contract or his representative assign his judgment, or the balance of his judgment, as the case may be, to the Insurer and the Insurer shall account to the person insured under the contract for any recovery it makes under that judgment for any amount in excess of what it has paid to that person and its costs.

7. Notice and Proof of Claim

- (1) In respect of a claim for bodily injuries or death, the person insured under the contract or his representative, or the person otherwise entitled to make claim or his representative, shall,
- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in Ontario, within thirty days from the date of the accident or as soon as practicable thereafter;
 - (b) within ninety days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;
 - (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practise; and
 - (d) give details to the Insurer of any policies of insurance, other than policies of life insurance, to which such person may have recourse.
- (2) In respect of a claim for damage to the insured automobile or its contents, or to both the insured automobile and its contents, the provisions of statutory condition 4 of subsection 2 of section 207 of The Insurance Act apply with necessary modifications to the insured automobile and to any contents with respect to which a claim is made.

8. Medical Reports

- (1) The Insurer has the right and the claimant shall afford to the Insurer an opportunity to examine the person of the person insured under the contract when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the person insured under the contract, to make an autopsy subject to the law relating to autopsies.
- (2) At the request of the claimant or his representative, the Insurer shall supply to the claimant or his representative, as the case may be, a copy of any medical or autopsy report obtained as a result of an examination or autopsy under subclause (1) of this clause.

9. When Moneys Payable

- (1) No person shall bring an action to recover the amount of a claim provided for under the contract pursuant to subsection 1 of section 231 of **The Insurance Act** unless the requirements of this subsection 3 have been complied with.
- (2) Every action or proceeding against the Insurer for the recovery of a claim shall be commenced within two years from the date on which the cause of action against the Insurer arose and not afterwards.

10. Limitation of Benefit Payable

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection 1 of Section 231 of **The Insurance Act**, he or his representative or any person claiming through or under him or by virtue of **The Family Law Reform Act, 1978** may recover only an amount equal to one benefit.

11. Application of General Provisions

- (1) In so far as applicable the general provisions, definitions, exclusions and statutory conditions of this policy also apply to payments under this subsection 3.
- (2) Special Provisions, Definitions and Exclusions of Section B of this policy do not apply to the insurance provided by this subsection 3.

SPECIAL PROVISIONS, DEFINITIONS, AND EXCLUSIONS OF ACCIDENT BENEFITS SECTION B

(1) "INSURED PERSON" DEFINED

In this section, the words "insured person" mean,

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that,
 - (i) the insured is an individual or are husband and wife;
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles at the time of the accident;
 - (iii) such other automobile is now owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;

- (iv) such other automobile is now owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
- (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsections 1 and 2 of this section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
- (d) in subsections 1 and 2 of this section only, the named insured, if an individual and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,
 - (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles at the time of the accident;
 - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured;
 - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
- (e) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile of the private passenger or station wagon type; and
- (f) in subsections 1 and 2 of this section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that, in respect of (e) and (f) above,
 - (i) neither such employee nor partner or his or her spouse is the owner of an automobile of the private passenger or station wagon type;
 - (ii) the described automobile is of the private passenger or station wagon type;

- (iii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
- (iv) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner;
- (v) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured;

in respect of (e) above only,

- (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(2) EXCLUSIONS

- (a) Except as provided in Part III of Subsection 1, the Insurer shall not be liable under this section for bodily injury to or death of any person,
 - (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
 - (ii) who is entitled to receive the benefits of any workmen's compensation law or plan; or
 - (iii) caused directly or indirectly by radioactive material
- (b) The insurer shall not be liable under subsection 1 or Part II of subsection 2 of this section for bodily injury or death,
 - (i) sustained by any person who is convicted of drunken or impaired driving or of driving while under the influence of drugs at the time of the accident; or
 - (ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

(3) NOTICE AND PROOF OF CLAIM

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, within 30 days from the date of the accident or as soon as practicable thereafter;
- (b) within 90 days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;

- (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practise.

(4) MEDICAL REPORTS

The Insurer has the right and the claimant shall afford to the Insurer, an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

(5) "PHYSICIAN" DEFINED

"Physician" means a legally qualified medical practitioner.

(6) RELEASE

Notwithstanding any release provided for under the relevant sections of **The Insurance Act** the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

(7) WHEN MONEYS PAYABLE

- (a) All amounts payable under this section, other than benefits under Part II of subsection 2, shall be paid by the Insurer within 30 days after it has received proof of claim. The initial benefits for loss of time under Part II of subsection 2 shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.
- (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 are complied with, nor until the amount of the loss has been ascertained as provided in this section.
- (c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

(8) LIMITATION ON BENEFIT PAYABLE

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection 1 or 2, he or his personal representative or any person claiming through or under him or by virtue of *The Fatal Accidents Act*, may recover only an amount equal to one benefit.

In so far as applicable the general provisions, definitions, exclusions and statutory conditions of the policy also apply.

SECTION C — LOSS OF OR DAMAGE TO INSURED AUTOMOBILE

The Insurer agrees to indemnify the insured against direct and accidental loss of or damage to the automobile, including its equipment

Subsection 1 — ALL PERILS — from all perils;

Subsection 2 — COLLISION OR UPSET — caused by collision with another object or by upset;

Subsection 3 — COMPREHENSIVE — from any peril other than by collision with another object or by upset;

The words "another object" as used in this subsection 3 shall be deemed to include (a) a vehicle to which the automobile is attached and (b) the surface of the ground and any object therein or thereon. Loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion shall be deemed loss or damage caused by perils for which insurance is provided under this subsection 3.

Subsection 4 — SPECIFIED PERILS — caused by fire, lightning, theft or attempt thereat, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing or aircraft or of parts thereof, rising water, or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water;

DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under any subsection of section C except loss or damage caused by fire or lightning or theft of the entire automobile covered by such subsection, shall give rise to a separate claim in respect of which the Insurer's liability shall be limited to the amount of loss or damage in excess of the amount deductible, if any, stated in the applicable subsection of section C of item 4 of the application.

EXCLUSIONS

The Insurer shall not be liable,

(1) under any subsection of section C for loss or damage

- (a) to tires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection; or**
- (b) caused by the conversion, embe'lement, theft or secretion by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement; or**

- (c) caused by the voluntary parting with title or ownership, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense; or
 - (d) caused directly or indirectly by contamination by radioactive material; or
 - (e) to contents of trailers or to rugs or robes; or
 - (f) to tapes and equipment for use with a tape player or recorder when such tapes or equipment are detached therefrom; or
 - (g) where the insured drives or operates the automobile
 - (i) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or
 - (ii) while in a condition for which he is convicted of an offence under Section 239 of the Criminal Code (Canada) or under or in connection with circumstances for which he is convicted of an offence under Section 238 of the Criminal Code (Canada); or
 - (h) where the insured permits, suffers, allows or connives at the use of the automobile by any person contrary to the provisions of (g);
- (2) under subsection 3 (Comprehensive), 4 (Specified Perils) only, for loss or damage caused by theft by any person, or persons residing in the same dwelling premises as the insured, or by any employee of the insured engaged in the operation, maintenance or repair of the automobile whether the theft occurs during the hours of such service or employment or not.

**See also General Provisions, Definitions, Exclusions
and Statutory Conditions of this policy**

ADDITIONAL AGREEMENTS OF INSURER

- (1) Where loss or damage arises from a peril for which a premium is specified under a subsection of this section, the Insurer further agrees:
- (a) to pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America for which the Insured is legally liable;
 - (b) to waive subrogation against every person who, with the insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply to any person (1) having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles, or (2) who has (i) committed a breach of any condition of this policy or (ii) driven or operated the automobile in the circumstances referred to in (i) or (ii) of paragraph (g) of the Exclusions to Section 3 of this policy;

- (c) to indemnify the insured and any other person who personally drives a temporary substitute automobile as defined in the General Provisions of this policy against the liability imposed by law or assumed by the insured or such other person under any contract or agreement for direct and accidental physical loss or damage to such automobile and arising from the care, custody and control thereof; provided always that:
- (i) such indemnity is subject to the deductible clause and, exclusions of each such subsection;
 - (ii) if the owner of such automobile has or places insurance against any peril insured by this section, the indemnity provided herein shall be limited to the sum by which the deductible amount, if any, of such other insurance exceeds the deductible amount stated in the applicable subsection of this policy;
 - (iii) the Additional Agreements under section A of this policy shall, insofar as they are applicable, extend to the indemnity provided herein.
- (2) **Loss of Use by Theft** — Where indemnity is provided under subsections 1, 3 or 4 of section C hereof the Insurer further agrees, following a theft of the entire automobile covered thereby, to reimburse the insured for expense not exceeding \$25.00 for any one day nor totalling more than \$750.00 incurred for the rental of a substitute automobile including taxicabs and public means of transportation.

Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the Insurer or the police and terminating, regardless of the expiration of the policy period, (a) upon the date of the completion of repairs to or the replacement of the property lost or damaged, or (b) upon such earlier date as the Insurer makes or tenders settlement nor the loss or damage caused by such theft.

GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS

TERRITORY

This policy applies only while the automobile is being operated, used, stored or parked within Canada, the United States of America or upon a vessel plying between ports of those countries.

OCCUPANT DEFINED

In this policy the word "occupant" means a person driving, being carried in or upon or entering or getting on to or alighting from an automobile.

CONSENT OF OWNER

No person shall be entitled to indemnity or payment under this policy who is an occupant of any automobile which is being used without the consent of the owner thereof.

GARAGE PERSONNEL EXCLUDED

No person who is engaged in the business of selling, repairing, maintaining, storing, servicing or parking automobiles shall be entitled to indemnity or payment under this policy for any loss, damage, injury or death sustained while engaged in the use or operation of or while working upon the automobile in the course of that business or while so engaged in an occupant of the described automobile or a newly acquired automobile as defined in this policy, unless the person is the owner of such automobile or his employee or partner.

AUTOMOBILE DEFINED

In this policy except where stated to the contrary the words "the automobile" mean:

Under sections A (Third party Liability), B (Accident Benefits), C (Loss of or Damage to Insured Automobile)

- (a) The Described Automobile — an automobile, trailer or semi-trailer specifically described in the policy or within the description of insured automobiles set forth therein;
- (b) A Newly Acquired Automobile — an automobile, ownership of which is acquired by the insured and, within fourteen days following the date of its delivery to him, notified to the Insurer in respect of which the insured has no other valid insurance, if either it replaces an automobile described in the application or the Insurer insures (in respect of the section or subsection of the Insuring Agreements under which claim is made) all automobiles owned by the insured at such delivery date and in respect of which the insured as such delivery date and in respect of which the insured pays any additional premium required; provided however, that insurance hereunder shall not apply if the insured is engaged in the business of selling automobiles;

and under sections A (Third Party Liability), B (Accident Benefits) only

- (c) A Temporary Substitute Automobile — an automobile not owned by the insured, nor by any person or persons residing in the same dwelling premises as the insured, while temporarily used as the substitute for the described automobile which is not in use by any person insured by this policy, because of its breakdown, repair, servicing, loss, destruction or sale;
- (d) Any automobile of the private passenger or station wagon type, other than the described automobile, while personally driven by the insured, or by his or her spouse if residing in the same dwelling premises as the insured, provided that
 - (i) the described automobile is of the private passenger or station wagon type;
 - (ii) the insured is an individual or are husband and wife;
 - (iii) neither the insured nor his or her spouse is driving such automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
 - (iv) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;

- (v) such other automobile is not owned, hired or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
- (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (e) If the insured is a corporation, unincorporated association or registered co-partnership, any automobile of the private passenger or station wagon type, other than the described automobile, while personally driven by the employee or partner for whose regular use the described automobiles is furnished, or by his or her spouse if residing in the same dwelling premises as such employee or partner, provided that
 - (i) neither such employee or partner or his or her spouse is the owner of an automobile of the private passenger or station wagon type;
 - (ii) the described automobile is of the private passenger or station wagon type;
 - (iii) neither such employee, partner or spouse is driving the automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
 - (iv) such other automobile is not owned, hired or leased or regularly or frequently used by the insured or such employee or by any partner of the insured or by any persons residing in the same dwelling premises as any of the aforementioned persons;
 - (v) such other automobile is not used for carrying passengers for compensation or hire or commercial delivery);
- (f) Trailers — any trailer used in connection with the automobile.

6. TWO OR MORE AUTOMOBILES

- (a) When two or more automobiles are described hereunder (i) with respect to the use or operation of such described automobiles, each automobile shall be deemed to be insured under a separate policy; (ii) with respect to the use or operation of an automobile not owned by the insured, the limit of the insurer's liability shall not exceed the highest limit applicable to any one described automobile;
- (b) When the insured owns two or more automobiles which are insured as described automobiles under two or more automobiles insurance policies, the limit of the insurer under this policy with respect to the use or operation of an automobile not owned by the insured shall not exceed the proportion that the highest limit applicable to any one automobile described in this policy bears to the sum of the highest limits applicable under each policy and in no event shall exceed such proportion of the highest limit applicable to any one automobile under any policy;
- (c) A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one automobile with respect to the limit(s) of liability under Insuring Agreements A and B and separate automobiles with respect to the limit(s) of liability, including any deductible provision, under Insuring Agreement C.

7. WAR RISKS EXCLUDED

The Insurer shall not be liable under section B or C of this policy for any loss, damage, injury or death caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operation of armed forces while engaged in hostilities, whether war be declared or not,

8. EXCLUDED USES

Unless coverage is expressly given by an endorsement of this policy, the Insurer shall not be liable under this policy while:

- (a) the automobile is rented or leased to another; provided that the use by an employee of his automobile on the business of his employer and for which he is paid shall not be deemed the renting or leasing of the automobile to another;
- (b) the automobile is used to carry explosives, or to carry radio-active material for research, education, development or industrial purposes, or for purposes incidental thereto;
- (c) the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be the carrying of passengers for compensation or hire:
 - (i) the use by the insured of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;
 - (ii) the occasional and infrequent use by the insured of his automobile for the carriage of another person who shares the cost of the trip;
 - (iii) the use by the insured of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse;
 - (iv) the use by the insured of his automobile for the carriage of clients or customers or prospective clients or customers;
 - (v) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school or school activities conducted within the educational program.

STATUTORY CONDITIONS

In these Statutory Conditions, unless the context otherwise required, the word "insured" means a person insured by this contract whether named or not. *With respect to Section B only Statutory Conditions 1, 8 and 9 shall apply.*

Material Change in Risk

1. (1) The insured named in this contract shall promptly notify the Insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.
- (2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:

- (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy Act* (Canada);

and in respect of insurance against loss of or damage to the automobile,

- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
- (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

Prohibited Use by Insured

2. (1) The insured shall not drive or operate the automobile.

- (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or
- (b) while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
- (c) while he is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
- (d) for any illicit or prohibited trade or transportation; or
- (e) in any race or speed test.

Prohibited Use by Others

- (2) The insured shall not permit, suffer, allow or connive at the use of the automobile,

- (a) by any person,
 - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile; or
 - (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him;
- (b) by any person who is a member of the household of the insured while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
- (c) for any illicit or prohibited trade or transportation; or

- (d) in any race or speed test.

Requirements Where Loss or Damage to Persons or Property

3. (1) The insured shall,

- (a) promptly give to the Insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
- (b) verify by statutory declaration, if required by the Insurer, that the claim arise out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
- (c) forward immediately to the Insurer every letter, document, advice or writ received by him from or on behalf of the claimant.

(2) The insured shall not,

- (a) voluntarily assume any liability or settle any claim except at his own costs; or
 - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The insured shall, whenever requested by the Insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the Insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Requirements Where Loss or Damage to Automobile

4. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,

- (a) promptly give notice thereof in writing to the Insurer with the fullest information obtainable at the time;
- (b) at the expense of the Insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
- (c) deliver to the Insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition 1 of this condition is not recoverable under this contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,
 - (a) without the written consent of the Insurer; or
 - (b) until the Insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

Examination of Insured

- (4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the Insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

Insurer Liable for Cash Value of Automobile

- (5) The Insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the Insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

Repair or Replacement

- (6) Except where an appraisal has been made, the Insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damage or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

No Abandonment: Salvage

- (7) There shall be no abandonment of the automobile to the Insurer without the Insurer's consent. If the Insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall invest in the Insurer.

In Case of Disagreement

- (8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under *The Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand thereof is made in writing and until after proof of loss has been delivered.

Inspection of Automobile

5. The insured shall permit the Insurer at all reasonable times to inspect the automobile and its equipment.

Time and Manner of Payment of Insurance Money

6. (1) The Insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under subcondition 8 of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

When Action May be Brought

- (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the Insurer.

Limitation of Actions

- (3) Every action or proceeding against the Insurer under this contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

Who May Give Notice and Proofs of Claim

7. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination

8. (1) This contract may be terminated,

- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;
 - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the Insurer,
- (a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but in no event shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and
 - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the Insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen days mentioned in clause a of subsection 1 of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Notice

9. Any written notice to the Insurer may be delivered at, or sent by registered mail, to the chief agency or head office of the Insurer in the Province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the Insurer. In this condition, the expression "registered" means registered in or outside Canada.

S.E.F. No. 42

UNDERINSURED MOTORIST ENDORSEMENT

Brief Explanation of Endorsement

By this endorsement your Insurer provides additional benefits to you and other insured persons who have a claim against another motorist for injuries or death if the other motorist has insufficient insurance to pay the claim. The limit of this coverage is the difference between the liability insurance limit of your policy and that carried by the motorist at fault. For example, if your policy shows a liability limit of \$500,000 and you obtained a judgment of \$300,000 against the "at fault" motorist — but he was insured for only \$100,000 — you would be able to claim the difference of \$200,000 from your Insurer. The coverage also applies if the "at fault" motorist is not insured.

Priority of payment is given to you and your family over other occupants of the automobile.

For complete details, refer to the endorsement wording.

Insuring Agreement

In consideration of a premium of \$..... and subject to the provisions hereof, it is understood and agreed that the Insurer shall indemnify an insured person who sustains bodily injury or death by accident arising out of the use or operation of an automobile for the amount such person is legally entitled to recover from.

Underinsured Motorist Excess Cover

- (a) the owner or operator of an automobile who is insured under a motor vehicle liability policy or who has provided a bond, cash deposit or other financial guarantee as required by law in lieu of such a policy; and

Uninsured Motorist Excess Cover

- (b) the owner or operator of an uninsured automobile as defined in Subsection 3 of Section 3 of the policy to which this endorsement is attached.

Limit Under Paragraph (a)

1. Payment under paragraph (a) of the insuring agreement above is excess to recovery from the sources referred to in that paragraph and to recovery of any first loss insurance referred to in Clause 8 but shall not exceed the difference between the aggregate recovery from such sources and the legal liability limits referred to in Clause 3.

Limit Under Paragraph (b)

2. Payment under paragraph (b) of the insuring agreement above is excess to

- (i) any amount payable by an unsatisfied judgment or similar fund;
- (ii) any such amount which would have been payable by such fund had this endorsement not been in effect;
- (iii) any amount payable under the uninsured motorist cover of a motor vehicle liability policy, and shall not exceed the difference between recovery under sub-clauses (i), (ii) and (iii) and the legal liability limits referred to in Clause 3.

Limit(s)

3. The amount payable hereunder, regardless of the number of persons injured or killed, shall not exceed the amount stated as the legal liability limit applicable to the item covering the automobile in Section A of the policy.

Determination of Legal Liability

4. The determination of legal liability and amount of damages shall be in accordance with Subsection 3 of Section B of the policy to which this endorsement is attached.

Limitation Period

5. Every action or proceeding against the Insurer for recovery under this endorsement shall be commenced within one year from the date when the cause of action hereunder arose.

Family Priority of Claims

6. The settlement of the claim of an insured person as defined in paragraphs (a) and (b) of Clause 9 shall have priority over the claim of any other insured person.

Where Insured Has Vehicles Separately Insured

7. Subject to Clauses 1 and 2, where the named insured has automobiles separately insured under two or more automobile liability policies, the Insurer under the policy to which this endorsement is attached shall pay the proportion only that its limit of liability hereunder bears to the total of all applicable limits under all of the policies involved.

Primary and Excess Insurance

8. Where an insured person is entitled to payment under Underinsured Motorist insurance under more than one policy, such insurance on the vehicle in which the insured person is an occupant is first loss insurance and such insurance under any other policy is excess.

Definition of Insured Person

9. In this endorsement "insured person" means:

- (a) the named insured and, if residing in the same dwelling premises as the named insured, his or her spouse and any dependent relative of either, while
 - (i) an occupant of the described automobile, a newly acquired automobile or a temporary substitute automobile as defined in the General Provisions, Definitions and Exclusions of the policy;
 - (ii) an occupant of any other automobile but excluding the person who owns such other automobile or leases it for a period in excess of 30 days; or
 - (iii) not an occupant of an automobile and is struck by an automobile;
- (b) if the named insured is a corporation, unincorporated association or partnership, any employee or partner of the named insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either residing in the same dwelling premises as such employee or partner, in the circumstances referred to in sub-paragraphs (i), (ii) and (iii) of paragraph (a);
- (c) any other person while an occupant of the described automobile, a newly acquired automobile or a temporary substitute automobile as defined in the General Provisions, Definitions and Exclusions of the policy.

If more than one automobile is insured under this policy, this endorsement shall apply only to the automobile(s) described under item(s) number of the schedule of automobiles attached to and forming part of this policy.

Except as otherwise provided in this endorsement, all limits, terms, conditions, provisions, definitions and exclusions of the policy shall have full force and effect.

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from 12:01 a.m. Standard Time.

S.E.F. No. 44 AND SUPPLEMENT

FAMILY PROTECTION ENDORSEMENT

IMPORTANT NOTICE

Your policy includes S.E.F. 44 Family Protection Endorsement in place of S.E.F. 42 Underinsured Motorist Cover which has been withdrawn from use by the Canadian Council of Superintendents of Insurance.

The Family Protection Endorsement is a more restrictive coverage. For example:

it is limited to you and, if residing with you, your spouse and certain dependent relatives

it does not cover any other occupant of your automobile

a person entitled to claim under the liability section of your policy is not entitled to claim on your Family Protection Endorsement.

There are other changes and for full details of the new coverage you should read the new endorsement carefully.

1. DEFINITIONS: where used in this endorsement,

(a) The term "automobile" shall mean a vehicle with respect to which motor vehicle liability insurance would be required if it were subject to the law of the province governing the policy.

(b) The term "dependant relative" means:

(i) a person,

(1) under the age of 18 years who resides with the named insured and is principally dependant upon the named insured or the spouse of the named insured for financial support,

(2) 18 years of age or over who, because of mental or physical infirmity, is principally dependant upon the named insured or the spouse of the named insured for financial support, or

(3) 18 years of age or over who, because of full-time attendance at a school, college or university, is principally dependant upon the named insured or the spouse of the named insured for financial support; or

(ii) a parent or relative,

(1) of the named insured, or

(2) of the spouse of the named insured,

residing in the same dwelling premises and principally dependant upon the named insured or the spouse of the named insured for financial support.

(c) The term "eligible claimant" means:

- (i) the insured person sustaining bodily injury;
 - (ii) any other person who, in the jurisdiction in which the accident occurred, is entitled to maintain an action against the inadequately insured motorist for damages because of the death of an insured person or because of bodily injury to an insured person.
- (d) The words "Family Protection Coverage" mean the insurance as provided by this form of endorsement and any other coverage provided by virtue of a contract of insurance providing indemnity similar in nature to the indemnity provided by this endorsement, whether described as underinsured motorist coverage or not.
- (e) The term "inadequately insured motorist" means:
- (i) the identified owner or identified driver of an automobile with respect to which the total motor vehicle liability insurance or provided bonds, cash deposits or other financial guarantees as required by law in lieu of insurance, of the owner and driver is less than the Limit of Family Protection Coverage,
 - (ii) the identified owner or identified driver of an uninsured automobile as defined in the policy;

provided always that

where an eligible claimant is entitled to recover damages from an inadequately insured motorist and the owner or operator of any other automobile, then for the purpose of 1 (e)(i) above and for the purpose of determining the Insurer's limit of liability under paragraph 3 of this endorsement, the limits of motor vehicle liability insurance shall be deemed to be the aggregate of all limits of motor vehicle liability insurance and all bonds, cash deposits or other financial guarantees as required by law in lieu of such insurance, with respect to all of the said automobiles, and

where an eligible claimant is entitled to recover damages from the identified owner or identified driver of an uninsured automobile as defined in this policy, then for the purpose of 1 (e)(i) and 1(e)(ii), and for the purpose of determining the limit of coverage under paragraph 3 of this endorsement, uninsured motorist coverage available to the eligible claimant shall be taken into account as if it were motor vehicle liability insurance with the limits stated to be those of the uninsured motorist coverage.

- (f) The words "insured person" mean:
- (i) the named insured and his or her spouse if residing in the same dwelling premises and any dependant relative of either, while
 - (1) an occupant of the described automobile, a newly acquired automobile or a temporary substitute automobile as defined in the general provisions, definitions and exclusions of the policy,
 - (2) an occupant of any other automobile but excluding the person who leases such other automobile for a period in excess of 30 days or who owns such other automobile unless underinsured motorist insurance is in force in respect of such other automobile, or

- (3) not an occupant of an automobile who is struck by an automobile;
- (ii) if the named insured is a corporation, an unincorporated association or partnership, any officer, employee or partner of the named insured for whose regular use the described automobile is provided (which individual shall be considered the "named insured" for the purposes of Definition 1(b)), and his or her spouse if residing in the same dwelling premises, and any dependant relative of either, while
 - (1) an occupant of the described automobile, a newly acquired automobile or a temporary substitute automobile as defined in the general provisions, definitions and exclusions of the policy,
 - (2) an occupant of an automobile other than the automobile referred to in (ii)(1) above leased by the named insured for a period in excess of 30 days or owned by the named insured provided underinsured motorist insurance is in force in respect of such other automobile, or
- (3) not an occupant of an automobile who is struck by an automobile;

provided that where the policy has been endorsed to grant permission to rent or lease the described automobile for a period in excess of 30 days, any reference to the named insured shall be construed as a reference to the lessee specified in that endorsement.

- (g) The term "Limit of Family Protection Coverage" means the amount set out in the policy documents, with respect to this endorsement. If no amount is set out in the policy documents, then the Section A limit with respect to the automobile to which this endorsement applies is the Limit of Family Protection Coverage.
- (h) The words "limits of motor vehicle liability insurance" means the amount stated in the said policy of insurance referred to as the limit of liability of the Insurer with respect to liability claims, regardless of whether the stated limits are reduced by the payment of claims or otherwise, provided however, in the event that an Insurer's liability under a policy of insurance is reduced by operation of law to the statutory minimum limits in a jurisdiction because of a breach of the said policy of insurance, then the statutory minimum limits are the "limits of motor vehicle liability insurance" in the said policy.
- (i) The term "spouse" means either of a man or woman who
 - (i) are married to each other;
 - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or
 - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabitating or have cohabited within the preceding year, and includes,
 - (iv) either of a man and woman not being married to each other who have cohabited

- (1) continuously for a period of not less than five years, or
- (2) in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year.

- (j) The term "the policy" means the policy to which this endorsement is attached.

2. INSURING AGREEMENT

In consideration of the premium charged and subject to the provisions hereof, it is understood and agreed that the Insurer shall indemnify each eligible claimant for the amount that such eligible claimant is legally entitled to recover from an inadequately insured motorist as compensatory damages in respect of bodily injury or death sustained by an insured person by accident arising out of the use or operation of an automobile.

3. LIMIT OF COVERAGE UNDER THIS ENDORSEMENT

- (a) The Insurer's maximum liability under this endorsement, regardless of the number of eligible claimants, or number of insured persons injured or killed, or number of automobiles insured under the policy shall be the amount by which the Limit of Family Protection Coverage exceeds the total of all limits of motor vehicle liability insurance, or bonds, or cash deposits, or other financial guarantees as required by law in lieu of such insurance, of the inadequately insured motorist and of any person jointly liable therewith;
- (b) Where this endorsement applies as excess, the Insurer's maximum liability under this endorsement is the amount determined in accordance with paragraph 3(a) less the amounts available to eligible claimants under any first loss insurance as referred to in paragraph 7 of this endorsement.

4. AMOUNT PAYABLE PER ELIGIBLE CLAIMANT

- (a) The amount payable under this endorsement to any eligible claimant shall be ascertained by determining the amount of damages the eligible claimant is legally entitled to recover from the inadequately insured motorist and deducting from that amount the aggregate of the amounts referred to in paragraph 4(b), but in no event shall the Insurer be obliged to pay any amount in excess of the limit of coverage as determined under paragraph 3 of this endorsement.
- (b) The amount payable under this endorsement to any eligible claimant is excess to any amount actually recovered by the eligible claimant from any source (other than money payable on death under a policy of insurance) and is excess to any amounts the eligible claimant is entitled to recover (whether such entitlement is pursued or not) from:

- (i) the insurers of the inadequately insured motorist, and from bonds, cash deposits or other financial guarantees given on behalf of the inadequately insured motorist;
 - (ii) the insurers of any person jointly liable with the inadequately insured motorist for the damages sustained by an insured person;
 - (iii) the Régie de l'assurance automobile du Québec;
 - (iv) an unsatisfied judgment fund or similar plan or which would have been payable by such fund or plan had this endorsement not been in effect;
 - (v) the uninsured motorist coverage of a motor vehicle liability policy;
 - (vi) any automobile accident benefits plan applicable in the jurisdiction in which the accident occurred;
 - (vii) any policy of insurance providing disability benefits or loss of income benefits or medical expense or rehabilitation benefits;
 - (viii) any Worker's Compensation Act or similar law of the jurisdiction applicable to the injury or death sustained;
 - (ix) any Family Protection Coverage of a motor vehicle liability policy.
- (c) In the event that the Insurer is presented with claims by more than one eligible claimant and the total of the amounts payable to the eligible claimants exceeds the limit of the Insurer's liability under the endorsement as set out in paragraph 3, the insurer may pay to each eligible claimant a pro rata portion of the amount otherwise payable to each eligible claimant. In the event that payments are made to eligible claimants under this endorsement prior to the receipt of actual notice of any additional claim, then the limits of this endorsement as referred to in paragraph 3 of this endorsement shall be the amount determined in paragraph 3 less the amounts paid to the prior eligible claimants.

5. DETERMINATION OF THE AMOUNT AN ELIGIBLE CLAIMANT IS LEGALLY ENTITLED TO RECOVER

- (a) The amount that an eligible claimant is legally entitled to recover shall be determined in accordance with the procedures set forth for determination of the issues of quantum and liability by the uninsured motorist coverage provisions of the policy.
- (b) In determining the amount an eligible claimant is legally entitled to recover from the inadequately insured motorist, issues of quantum shall be decided in accordance with the law of the province governing the policy and issues of liability shall be decided in accordance with the law of the place where the accident occurred.
- (c) In determining any amounts an eligible claimant is legally entitled to recover, no amount shall be included with respect to pre-judgment interest accumulating prior to notice as required by this endorsement.
- (d) In determining any amounts an eligible claimant is legally entitled to recover, no amount shall be included with respect to punitive, exemplary, aggravated or other damages the award of which is based in whole or in part on the conduct of the inadequately insured motorist or person jointly liable therewith, to the extent that the said damages are not for the purpose of compensating the eligible claimant for actually incurred losses.
- (e) In determining any amounts an eligible claimant is legally entitled to recover from an inadequately insured motorist as defined in paragraph 1(e)(i), no amount shall be included with respect to costs.
- (f) No findings of a Court with respect to issues of quantum or liability are binding on the Insurer unless the Insurer was provided with a reasonable opportunity to participate in those proceedings as a party.

6. PROCEDURES

- (a) The following requirements are conditions precedent to the liability of the Insurer to the eligible claimant under this endorsement:
 - (i) the eligible claimant shall promptly give written notice, with all available particulars, of any accident involving injury or death to an insured person and of any claim made on account of the accident,
 - (ii) the eligible claimant shall, if so required, provide details of any policies of insurance, other than life insurance, to which the eligible claimant may have recourse,
 - (iii) the eligible claimant and the insured person shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the Insurer or its representative, all documents in their possession or control that relate to the matters in question, and they shall permit extracts and copies thereof to be made.

- (b) Where an eligible claimant commences a legal action for damages for bodily injury or death against any other person owning or operating an automobile involved in the accident, a copy of the Writ of Summons or other initiating process shall be delivered or sent by registered mail immediately to the chief agency or head office of the Insurer in the province together with particulars of the insurance and loss.
- (c) Every action or proceeding against the Insurer for recovery under this endorsement shall be commenced within 12 months from the date upon which the eligible claimant or his legal representatives knew or ought to have known that the quantum of the claims with respect to an insured person exceeded the minimum limits for motor vehicle liability insurance in the jurisdiction in which the accident occurred. No action which is commenced within 2 years of the date of the accident shall be barred by this provision.

7. MULTIPLE COVERAGES

Subject to the provisions hereof, where an eligible claimant is entitled to payment under Family Protection Coverage under more than one policy and the insured person

- (a) is an occupant of an automobile, such insurance on the automobile in which the insured person is an occupant is first loss insurance and any other such insurance is excess;
- (b) is not an occupant of an automobile, such insurance in any policy in the name of the insured person is first loss insurance and any other such insurance is excess.

All applicable first loss Family Protection Coverage shall be apportioned on a pro rata basis but in no event shall the aggregate payment under all such insurances exceed the highest limit of coverage provided by any one of such first loss insurances. The applicable first loss insurance shall be exhausted before recourse is made to excess insurances. All applicable excess Family Protection Coverage shall be similarly apportioned on a pro rata basis but in no event shall the aggregate payment under all such insurances exceed the highest limit of coverage as defined in paragraph 3(b) thereof, provided by any one of such excess insurances.

8. ACCIDENTS IN THE PROVINCE OF QUEBEC

This endorsement does not apply to an accident occurring in the Province of Quebec for which compensation is payable under the Automobile Insurance Act of Quebec or by virtue of an agreement referred to in that Act.

9. SUBROGATION

Where a claim is made under this endorsement, the Insurer is subrogated to the rights of the eligible claimant by whom a claim is made, and may maintain an action in the name of that person against the inadequately insured motorist and the persons referred to in paragraph 4(b).

10. ASSIGNMENT OF RIGHTS OF ACTION

Where a payment is made under this endorsement, the Insurer is entitled to receive from the eligible claimant, in consideration thereof, an assignment of all rights of action whether judgment is obtained or not, and the eligible claimant undertakes to cooperate with the Insurer, except in a pecuniary way, in the pursuit of any subrogated action or any right of action so assigned.

11. MISCELLANEOUS PROVISIONS

If more than one automobile is insured under the policy, this endorsement shall apply only to the automobile(s) against which S.E.F. No. 44 is designated in the schedule of automobiles forming part of the policy. If S.E.F. No. 44 is designated with respect to more than one automobile in the schedule of automobiles forming part of this policy, then the coverages provided shall be construed as if provided by separate policies of insurance with respect to each automobile to which endorsement S.E.F. No. 44 is applicable, subject always to the provisions of paragraph 7 hereof.

This endorsement is attached to and forms part of the policy and shall be effective from the local time and effective date of the policy or renewal thereof, or if added to the policy during the policy period, from the local time and effective date of the endorsement specifying the addition of this coverage.

Except as otherwise provided in this endorsement, all limits, terms, conditions, provisions, definitions and exclusions of the policy shall have full force and effect.

S.E.F. No. 44

SUPPLEMENT

AGREEMENTS

- 1.(a) Supplementary Agreement 1(b) below applies only where the person injured or killed is not an insured person as defined in the Family Protection Coverage of any policy of insurance or does not own an automobile which is licensed in any jurisdiction of Canada where Family Protection Coverage is available.
- (b) Subject to 1(a) above, the insurer undertakes to include in the definition of "dependant relative" the following:
 - (i) any relative of the named insured, or of the spouse of the named insured, who resides in the same premises as the named insured; and,
 - (ii) any other relative of the named insured, or of the spouse of the named insured, but only while an occupant of the described automobile, a newly acquired automobile, or a temporary substitute automobile, as defined in the policy.
2. The amount determined under paragraph 3 of the Family Protection Endorsement is the insurer's limit of liability for the aggregate of all claims arising out of any one occurrence. Nothing in this Supplement is to be construed so as to increase the insurer's limit of liability under the Family Protection Coverage which these agreements supplement.
3. These supplementary agreements modify only the Family Protection Coverage of the policy. Except as provided herein, all limits, terms, conditions, provisions, definitions and exclusions of the policy shall have full force and effect.

COMPULSORY AUTOMOBILE INSURANCE ACT

R.S.O. 1990, c. C.25, as am. S.O. 1993, c. 10,
s. 52(1)-(13); S.O. 1994, c. 11, s. 383; S.O. 1996, c. 21, s. 50

1. Definitions.—In this Act,

“agent”.—“agent” means an agent or broker within the meaning of the *Insurance Act* who is authorized to solicit automobile insurance;

“Association”.—“Association” means the Facility Association referred to in subsection 7(1);

“automobile insurance”.—“automobile insurance” means insurance against liability arising out of bodily injury or by the death of a person or loss of or damage to property caused by a motor vehicle or the use or operation thereof, and which,

- (a) insures at least to the limit required by Section 251 of the *Insurance Act*;
- (b) provides the statutory accident benefits set out in the *Statutory Accident Benefits Schedule* under the *Insurance Act*, and,
- (c) provides the benefits prescribed under section 265 of the *Insurance Act*.

“Commissioner”.—“Commissioner” means the commissioner of insurance under the *Insurance Act*;

“driver’s licence”.—“driver’s licence” has the same meaning as in the *Highway Traffic Act*;

“highway”.—“highway” has the same meaning as in the *Highway Traffic Act*;

“insurance card”.—“insurance card” means,

- (a) a Motor Vehicle Liability Insurance Card in the form approved by the Commissioner;
- (b) a policy of automobile insurance or a certificate of a policy in the form approved by the Commissioner, or
- (c) a document prescribed by the regulations.

“insurer”.—“insurer” means an insurer licensed under the *Insurance Act* and carrying on the business of automobile insurance, but does not include an insurer whose licence is limited to contracts of reinsurance;

“justice”.—“justice” means a justice under the *Provincial Offences Act*;

“lessee”.—“lessee” means, in respect of a motor vehicle, a person who is leasing the motor vehicle for a period of 30 days or more. (“locataire”)

“motor vehicle”.—“motor vehicle” has the same meaning as in the *Highway Traffic Act* and includes trailers and accessories and equipment of a motor vehicle;

“Plan”.—“Plan” means the Plan of Operation referred to in subsection 7(3);

“police officer”.—“police officer” means a chief of police or other police officer or constable or a person appointed under section 223 of the *Highway Traffic Act* for the purpose of carrying out the provisions of that Act;

“Registrar”.—“Registrar” means the Registrar of Motor Vehicles;

“regulations”.—“regulations” means the regulations made under this Act.

(2) **Streetcars**.—An electric streetcar that runs on rails principally on a highway shall be deemed to be a motor vehicle for the purposes of this Act.

(3) **Exception re: excluded driver**.—Even if a motor vehicle is insured under a contract of automobile insurance, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that contract unless the excluded driver is a named insured under another contract of automobile insurance. S.O. 1993, c. 10, s. 52(1); S.O. 1996, c. 21, s. 50.

2. (1) **Compulsory automobile insurance**.—Subject to the regulations, no owner or lessee of a motor vehicle shall,

(a) operate the motor vehicle; or

(b) cause or permit the motor vehicle to be operated,

on a highway unless the motor vehicle is insured under a contract of automobile insurance.

(2) **Definition**.—For the purposes of subsection (1), where a permit for a motor vehicle has been issued under subsection 7(7) of the *Highway Traffic Act*, “contract of automobile insurance” with respect to that motor vehicle means a contract of automobile insurance made with an insurer.

(3) **Offence**.—Every owner or lessee of a motor vehicle who,

(a) contravenes subsection (1) of this section or subsection 13(2); or

(b) surrenders an insurance card for inspection to a police officer, when requested to do so, purporting to show that the motor vehicle is insured under a contract of automobile insurance when the motor vehicle is not so insured,

is guilty of an offence and “is liable on a first conviction to a fine of not less than \$5,000 and not more than \$25,000 and on a subsequent conviction to a fine of not less than \$10,000 and not more than \$50,000” and, in addition, his or her driver’s licence may be suspended for a period of not more than one year.

(4) **Justice to secure possession of driver’s licence**.—Where a justice make a conviction under subsection (3) and the driver’s licence of the person convicted is suspended by the justice, the justice shall take the driver’s licence and forward it to the Registrar.

(5) **Police officer may secure possession**.—Where a driver’s licence is suspended under this section and the person to whom the suspension applies refuses or fails to surrender his or her licence to the justice forthwith, any police officer may, and upon the direction of the Registrar shall, take possession of the licence and forward it to the Registrar.

(6) **Offence.**—Every person who fails or refuses to surrender his or her driver's licence when required by a police officer under subsection (5) is guilty of an offence and on conviction is liable to a fine of not more than \$200.

(7) **Impounding motor vehicle.**—In the event of a conviction under subsection (3), the justice may order that the motor vehicle,

- (a) that was operated in contravention of subsection (1);
- (b) for which a false statement in respect of insurance was made in contravention of subsection 13(2); or
- (c) for which an insurance card was produced in contravention of clause (3)(b),

shall be seized, impounded and taken into the custody of the law for a period of not more than three months.

(8) **Cost of Storage.**—All costs and charges for the care and storage of the motor vehicle are a lien upon the motor vehicle that may be enforced in the manner provided by the *Repair and Storage Liens Act*.

(9) **Release of vehicle on security given by owner.**—If the person convicted under subsection (3) gives security to the satisfaction of the convicting justice, by bond, recognizance or otherwise, that the motor vehicle will not be operated upon a highway during the period specified by the justice in making an order under subsection (7), the motor vehicle may be released to the person convicted, and if the motor vehicle is operated upon a highway during such period it shall be deemed to have been operated without a permit, as defined in clause 6(1) of the *Highway Traffic Act*.

(10) **Three year limitation period.**—Proceedings may be commenced at any time within three years after the date on which an offence was, or is alleged to have been committed under subsection (1) or clause (3)(b) or subsection 13(2). S.O. 1994, c. 11, s. 383; S.O. 1996, c. 21, s. 50.

3. (1) **Operator to carry insurance card.**—An operator of a motor vehicle on a highway shall have in the motor vehicle at all times,

- (a) an insurance card for the motor vehicle; or
- (b) an insurance card evidencing that the operator is insured under a contract of automobile insurance,

and the operator shall surrender the insurance card for reasonable inspection upon the demand of a police officer.

(2) **Excluded driver to carry insurance card.**—Despite subsection (1), an operator of a motor vehicle who is named as an excluded driver under the contract of automobile insurance under which the vehicle is insured shall have in the vehicle at all times an insurance card evidencing that the operator is a named insured under another contract of automobile insurance, and the operator shall surrender the insurance card for reasonable inspection upon the demand of a police officer.

(3) **Offence.**—A person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$400. S.O. 1996, c. 21, s. 50.

4. (1) Particulars to be disclosed.—An operator of a motor vehicle on a highway who is directly or indirectly involved in an accident shall, on the request of any person directly or indirectly involved in the accident, disclose to the person the particulars of the contract of automobile insurance insuring the motor vehicle.

(2) Definition.—For the purposes of subsection (1), “particulars of the contract of automobile insurance” means,

- (a) the name and address of the insured;
- (b) the make, model and serial number of the insured vehicle;
- (c) the effective date and expiry date of the contract;
- (d) the name of the insurer;
- (e) the name of the insurer’s agent, if any; and
- (f) the policy number of the contract.

(3) Offence.—A person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$400. S.O. 1993, c. 10, s. 52(2); S.O. 1996, c. 21, s. 50.

5. (1) Obligations of agents.—An agent shall,

- (a) provide to an owner or lessee of a motor vehicle who is resident of Ontario an application for automobile insurance; and
- (b) submit to an insurer a completed application for automobile insurance,

when requested to do so by the owner or lessee of a motor vehicle. S.O. 1996, c. 21, s. 50.

6. (1) Insurance card to be issued.—An insurer shall issue, or cause its agent to issue, and insurance card to a person with whom a contract of automobile insurance is made or whose contract of automobile insurance is renewed.

(2) Misrepresentations.—No insurer or its agent shall, on an insurance card, specify an effective date earlier than the date on which the contract of automobile insurance was actually made or misrepresent in any other way the particulars of the automobile insurance.

7. (1) Facility Association continued.—The unincorporated non-profit association of insurers known as the Facility Association is continued under the name Facility Association in English and under the name Association des assureurs in French.

(2) Membership.—Every insurer is a member of the Association.

(3) The Plan.—The Association shall, in its articles of association, establish a plan, to be known as the Plan of Operation, for providing a contract of automobile insurance to owners, lessees and licensed drivers of motor vehicles who, but for the Plan, would be unable to obtain such insurance.

(3.1) **Compliance with Plan, etc.**—Every member of the Association shall comply with the Plan and the articles of association, by-laws, rules and resolutions of the Association.

(4) **Duty of Association.**—The Association shall ensure, through its members, that a contract of automobile insurance is provided with respect to every application for automobile insurance submitted under the Plan to an insurer under clause 5(b).

(5) **Agents bound by articles of association etc.**—Where an agent submits an application under the Plan to an insurer, the agent shall be bound by the applicable articles of association and by-laws of the Association.

(6) **Risk sharing.**—The Plan may include provisions with respect to the establishment and operation of a risk sharing pool for members of the Association.

(6.1) **Catastrophic claims.**—The Plan may include provisions with respect to the establishment and operation of a catastrophic claims fund for members of the Associations.

(7) **Actions by and against Association.**—The Association may, in its name,

(a) [Repealed. S.O. 1993, c. 10, s. 52(6).]

(b) sue and be sued. S.O. 1993, c. 10, s. 52(3)-(5); S.O. 1996, c. 21, s. 50.

8. (1) **Board of directors.**—The affairs of the Association shall be administered by a board of directors established in accordance with its articles of association.

(2) **Information to be provided to Commissioner.**—The Association shall notify the Commissioner of the names and residence addresses of the persons elected or appointed as officers and directors of the Association forthwith after such election or appointment, and such names and addresses may be made available to the public by the Commissioner.

(3) **Service on Association.**—Service on the directors or officers of the Association, or any of them, is good and sufficient service on the Association, and such service may be by personal service or by registered mail.

(4) **Idem.**—Where service on the Association is made by registered mail on a director or officer of the Association under subsection (3), the service shall be deemed to have been made on the fifth day after the day of mailing unless the notice is not delivered or the director or officer to whom notice is given establishes that he or she did not, acting in good faith, through absence, accident, illness or other cause beyond his or her control, receive the notice until a later date.

9. (1) **By-laws.**—The Association may pass by-laws relating to its affairs and not inconsistent with this Act or the regulations,

(a) providing for the execution of documents by the Association;

(b) respecting banking and finance;

(c) fixing the financial year of the Association and providing for the audit of the accounts and transactions of the Associations;

- (d) providing for the appointment and remuneration of officers and employees of the Association;
- (e) respecting the calling, holding and conducting of meetings of the Association and the duties of members of the Association;
- (f) delegating to an operating committee such powers and duties of the board of directors as are set out in the by-law, other than the power to make, amend or revoke by-laws;
- (g) prescribing forms and providing for their use;
- (h) respecting management of the property of the Association;
- (i) respecting the application of the funds of the Association and the investment and reinvestment of any of its funds not immediately required and for the safekeeping of its securities;
- (j) imposing assessments on members of the Association for the purpose of meeting the operating costs of the Association and the Plan and providing for the collection of such assessments;
- (k) prescribing rules and procedures related to the operation of the Plan; and
- (l) respecting all of the things that are considered necessary for the operation of the Plan, the attainment of the objects of the Association and the efficient conduct of its affairs.

(2) **Articles of Association.**—Any power of the Association that may be exercised by by-law under subsection (1) may be provided for in the articles of association of the Association.

10. (1) Filing of by-laws and amendments.—The Association shall file with the Commissioner every by-law and every amendment, revision or consolidation of the Plan or of the articles of association, by-laws, rules or resolutions of the Association at least thirty days before the effective date of the by-law or of the amendment, revision or consolidation.

(2) **Approval of Commissioner.**—No by-law and no amendment, revision or consolidation of the Plan or of the articles of association, by-laws, rules or resolutions of the Association shall come into effect unless it is approved by the Commissioner.

(3) **Rates.**—The Association may prepare rates in respect of contracts provided under the Plan.

(4) **Idem.**—Rates prepared under subsection (3) do not come into effect until approved under section 412 of the *Insurance Act*. S.O. 1993, c. 10, s. 52(7).

11. Investigatory powers.—The Commissioner has the same powers in respect of the Association that the Superintendent has in respect of an insurer under sections 29, 30, 31, 443 and 444 of the *Insurance Act*. S.O. 1993, c. 10, s. 52(8).

11.1 Annual report.—The Commissioner shall make an annual report to the Minister of Finance on the affairs of the Association and the Minister shall then lay the report

before the Assembly if it is in session or, if not, at the next session. S.O. 1993, c. 10, s. 52(8).

12. (1) Termination of contracts of insurance.—Where a contract of automobile insurance has been in effect for more than sixty days, the insurer may only terminate the contract for one or more of the following reasons:

1. Non-payment of, or any part of, the premium due under the contract or of any charge under any agreement ancillary to the contract.
2. The insured has given false particulars of the described automobile to the prejudice of the insurer.
3. The insured has knowingly misrepresented or failed to disclose in an application for insurance any fact required to be stated herein.
4. For a material change in risk within the meaning of statutory conditions referred to in section 234 of the *Insurance Act*.

(2) Exception.—Subsection (1) does not apply to,

- (a) an insurer running off its business, where the insurer has specific approval of the Commissioner to cancel a contract; or
- (b) a contract in respect of a motor vehicle used in the course of carrying on a business, trade or profession. S.O. 1993, c. 10, s. 52(9), (10).

13. (1) Certificate of insurance.—Every person making an application for the issuance validation or transfer of a permit for a motor vehicle shall certify, in the form prescribed by the regulations, that the motor vehicle is insured under a contract of automobile insurance and the Registrar, despite subsection 7(7) of the *Highway Traffic Act*, shall not issue, validate or transfer the permit for the motor vehicle, where such certificate of insurance is not provided to the Registrar.

(2) Offence for false statement.—No person shall knowingly make a false statement in the certificate of insurance required under subsection (1).

13.1 (1) Possession, use, sale, etc., of false or invalid insurance card.—No person shall knowingly,

- (a) have a false or invalid insurance card in his or her possession;
- (b) use a false or invalid insurance card; or
- (c) sell, give, deliver or distribute a false or invalid insurance card.

(2) Offence.—A person who contravenes this section is guilty of an offence and is liable on a first conviction to a fine of not less than \$10,000 and not more than \$50,000 and on a subsequent conviction to a fine of not less than \$20,000 and not more than \$100,000. S.O. 1996, c. 21, s. 50.

14. (1) Definition.—In this section “person” includes the Association.

(2) General penalty.—Every person who contravenes any provision of this Act or the regulations is guilty of an offence and, except where otherwise provided, on conviction

is liable on a first conviction to a fine of not more than \$100,000 and on a subsequent conviction to a fine of not more than \$200,000.

(3) **Insurers, Association.**—If an insurer or the Association is convicted of an offence under subsection (2), the fine shall not be less than \$5,000.

(4) **Directors, officers, etc.**—Every director, officer or chief agent of an insurer or the Association is guilty of an offence who,

- (a) caused, authorized, permitted or participated in the insurer or Association committing an offence to which subsection (2) applies; or
- (b) failed to take reasonable care to prevent the insurer or Association from committing an offence to which subsection (2) applies.

(5) **Penalty.**—On conviction for an offence under subsection (4), the person convicted is liable on a first conviction to a fine of not more than \$100,000 and on a subsequent conviction to a fine of not more than \$200,000.

(6) **Application.**—Subsection (4) applies whether or not the insurer or Association has been prosecuted for or convicted of an offence to which subsection (2) applies.

(7) **Restitution.**—A court that convicts a person of an offence to which this section applies may, in addition to any other penalty, order the person to make compensation or restitution in relation to the offence.

14.1 (1) Suspension or cancellation of licence.—In addition to any penalty under this Act, if an insurer contravenes this Act, the Lieutenant Governor in Council may, by order, suspend or cancel the insurer's licence issued under the *Insurance Act*.

(2) **Hearing.**—An order under subsection (1) shall be made only on the report of the Commissioner and only after a hearing before the Commissioner at which the insurer has an opportunity to make submissions on whether the insurer's licence should be suspended or cancelled. S.O. 1993, c. 10, s. 52(11).

15. (1) Regulations.—The Lieutenant Governor in Council may make regulations,

- (a) exempting any person or group of persons from the provisions of this Act, subject to such conditions as are set out in the regulations;
- (b) prescribing identifying markers for all automobiles licensed in Ontario and providing for their use;
- (c) prescribing documents for the purpose of the definition of "insurance card" in subsection 1(1).
- (c.1) making amendments to the Plan and to the articles of association, by-laws, rules and resolutions of the Association;
- (c.2) requiring an insurer, a class of insurers or the Association to provide the Minister of Transportation with such information as may be prescribed by the regulations, including personal information, subject to such conditions as may be prescribed by the regulations.

(d) prescribing forms and providing for their use. S.O. 1993, c. 10, s. 52(11), (12).

(2) **Regulation under cl. (1)(c.1).**—A regulation shall not be made under clause (1)(c.1) unless the Commissioner has consulted with the Association on the subject matter of the regulation and has submitted a report on the consultation to the Minister of Finance. S.O. 1993, c. 10, s. 52(13); S.O. 1996, c. 21, s. 50.

ONTARIO REGULATION 278/95

CERTIFICATE OF INSURANCE

O. Reg. 278/95

1. (1) Subject to subsections (2) and (3), when an application is made for the issuance, validation or transfer of a permit for a motor vehicle, the certificate of insurance required by subsection 13(1) of the Act shall be in a form approved by the Minister of Finance for that purpose.

(2) When an application is made for the validation of a permit for a motor vehicle, the certificate of insurance required by subsection 13(1) of the Act may be in an electronic form approved by the Minister of Finance for that purpose.

(3) When an application is made for the issuance, validation or transfer of a permit for one or more motor vehicles that are registered or are being registered under the Canadian Agreement on Vehicle Registration, the certificate of insurance required by subsection 13(1) of the Act may be in a form approved by the Minister of Finance for that purpose.

2. Regulation 94 of the Revised Regulations of Ontario, 1990 is revoked.

REGULATION 95

EXEMPTIONS

R.R.O. 1990, Reg. 95

1. The Act does not apply to,
 - (a) the Governor General;
 - (b) a department of the Government of Canada;
 - (c) the operator of a motor vehicle owned by or leased to the Governor General or a department of the Government of Canada. O. Reg. 124/80, s. 1.
2. (1) Subject to the conditions set out in subsection (2), the Act does not apply to,
 - (a) a member in good standing of the Conservative Mennonite Churches of Ontario who is a member of the Conservative Mennonite Automobile Brotherhood Assistance Plan; or
 - (b) the operator of a motor vehicle owned by or leased to a person referred to in clause (a).
- (2) The following conditions apply to the exemption granted by subsection (1):
 1. The Conservative Mennonite Churches of Ontario shall establish a plan to provide for financial responsibility, resulting from motor vehicle accidents, for its members.
 2. The Plan referred to in paragraph 1 shall be known as the Conservative Mennonite Automobile Brotherhood Assistance Plan.
 3. Where a new Plan Administrator is appointed, the new Plan Administrator shall forthwith advise the Superintendent of their name and address.
 4. Any Mennonite who is a member in good standing of one of the Conservative Mennonite Churches of Ontario may, by written application to his or her pastor, apply for membership in the Plan.
 5. If the pastor approves the application, the pastor shall submit the application to the Plan Administrator who shall keep a record of all approved applications.
 6. The Plan Administrator shall complete and furnish each member of the Plan with an identification card in Form 1.
 7. The Plan Administrator may cancel any membership by giving thirty days written notice of the cancellation to the member by registered mail.
 8. Where the death of or personal injury to or loss of or damage to property of any person is occasioned in Ontario by a member of the Plan or a person operating a motor vehicle of a member of the Plan, the Plan shall pay claims to persons who are not members of the Plan to the same extent as if the Plan were an

insurer and as if the motor vehicle of the member was insured under a contract of automobile insurance but the liability of the Plan shall be limited to the minimum liability provided for in subsection 251(1) of the *Insurance Act*, in respect of any one accident.

- 9. The Plan Administrator shall, at the request of the Superintendent, provide the Superintendent with proof that the Plan has established an irrevocable line of credit in the amount of at least \$100,000 with chartered banks operating in Ontario.
- 10. (1) For the purposes of completing the Certificate of Insurance required by the Act, a member of the Plan, shall mark on the certificate "Exempt—C.M.A.B.A. Plan" and shall sign the Certificate.
(2) At the time of submitting the Certificate of Insurance, the member shall submit the identification card in Form 1 for inspection.
- 11. A member of the Plan or the operator of a motor vehicle owned by a member of the Plan, as the case may be, shall have the identification card in Form 1 in the motor vehicle at all times while operating the motor vehicle on a highway and shall surrender the identification card for reasonable inspection upon the demand of a police officer.

FORM 1

Compulsory Automobile Insurance Act

CONSERVATIVE MENNONITE AUTOMOBILE
BROTHERHOOD ASSISTANCE PLAN

Name and Address of Member
Effective Date
Day Month Year
Date of Expiry
Day Month Year
Vehicle — Year Make
Serial Number
Self-Insurance Identification

The member named on this card is exempt from the *Compulsory Automobile Insurance Act*, in accordance with the regulations made thereunder.

CONSERVATIVE MENNONITE AUTOMOBILE
BROTHERHOOD ASSISTANCE PLAN

.....
Plan Administrator

.....
Address of Plan Administrator

CORPORATIONS ACT

PART V

INSURANCE CORPORATIONS

R.S.O. 1990, c. C.38, as am. S.O. 1994, c. 11, s. 384

140. Definitions.—In this Part, unless the context otherwise requires, the words and expressions defined in section 1 of the *Insurance Act* have the same meaning as in that Act.

141. (1) Application of Part.—This Part applies to all applications for incorporation of insurers intending to undertake contracts of insurance in Ontario, and to such insurers when incorporated, and to all insurers incorporated before the 30th day of April, 1954, under the laws of Ontario.

(2) Application of Act.—Except where inconsistent with this Part and except as provided in subsection (3), the other provisions of this Act apply to all such insurers.

(3) Exception.—Sections 97 to 107 and 110 do not apply to insurers undertaking and transacting life insurance.

(4) Syndicates excluded.—Corporations incorporated for the sole purpose of participating in or constituting a syndicate operating on The Canadian Insurance Exchange are not insurers within the meaning of subsection (1).

(5) Networking.—An insurer incorporated under this Act may,

- (a) act as an agent for any person in respect of the provision of any service that is provided by a financial institution;
- (b) enter into an arrangement with any person in respect of the provision of that service; and
- (c) refer any other person to a person referred to in clause (a) or (b). S.O. 1994, c. 11, s. 384.

142. (1) Incorporation of joint stock insurance companies.—A joint stock insurance company may be incorporated for the purpose of undertaking and transacting any class of insurance for which a joint stock insurance company may be licensed under the *Insurance Act*.

(2) Notice.—Applicants for incorporation shall, immediately before the application is made, publish in at least four consecutive issues of *The Ontario Gazette* notice of their intention to apply, and shall also, if so required by the Minister, publish elsewhere notice of such intention.

(3) Notice to Superintendent.—Applicants for incorporation shall also give at least one month's notice to the Superintendent of their intention to apply for incorporation.

143. (1) Definition.—In this section, “money received on account of shares” includes money received as premium on shares.

(2) Authorized capital.—The authorized capital of a company shall be not less than \$500,000.

(3) Exception.—A company whose authorized capital immediately before the 13th day of June, 1968 was less than \$500,000 shall not decrease its authorized capital, and subsection (2) does not apply to the corporation until its authorized capital is increased to \$500,000 or more.

(4) Par value of shares.—The authorized capital shall be divided into shares of \$100 each, but, where not less than \$200,000 of the authorized capital has been paid in in cash, the shares or any class of shares may be redivided into shares having a par value of \$1 or a multiple thereof, or an additional class or classes of shares having a par value of \$1 or a multiple thereof may be created.

(5) Application of money received on account of shares.—All money received on account of shares shall be paid into a branch or agency in Ontario of a bank listed under Schedule I or II to the *Bank Act* (Canada) or into a registered trust corporation in trust for the proposed company, and no money paid on account of shares before the first general meeting of the company has been organized shall be withdrawn or paid over to the company until after such meeting has been organized and an election of directors held thereat.

(6) Return of subscriptions on failure to secure licence.—A subscription for shares made before the granting of a licence under the *Insurance Act* shall contain the stipulation that all money received on account of shares will be returned to the subscribers without any deduction for promotion, organization or other expenses, in case the insurer fails to procure such a licence.

(7) Limit of percentage of subscriptions for charges.—A subscription for shares shall contain the stipulation that no sum will be used or paid, before or after incorporation, for commission, promotion or organization expenses in excess of a percentage, not exceeding 15, of the amount of money received on account of shares.

144. (1) Definition.—In subsection (2), “surplus to policyholders” means surplus of assets over liabilities excluding issued capital shown in the annual financial statement of the company at the end of the next preceding calendar year as filed with and approved by the Superintendent.

(2) Reduction of capital of life insurance companies.—Where a company undertaking life insurance has insurance in force of less than \$25,000,000 and has a surplus to policyholders of more than \$500,000, the directors may pass a by-law authorizing an application to the Lieutenant Governor for the issue of supplementary letters patent decreasing its authorized, subscribed and paid-in capital by not more than 50 per cent.

(3) New par value to be declared.—The by-law and the supplementary letters patent shall declare the new par value of the shares and the liability of the shareholders on partially paid-in shares.

(4) **Application, when to be made.**—The application shall not be made until the by-law has been confirmed by a vote of the shareholders present or represented by proxy at a general meeting duly called for considering it and holding not less than two-thirds of the votes cast at such meeting.

(5) **Surplus not to be decreased by dividends to shareholders.**—The supplementary letters patent shall contain a provision that any surplus created by reason of such decrease of capital will not be decreased by dividends subsequently declared to shareholders.

145. Ss. 165 (2-4), 167, 168 applicable to company undertaking life insurance.—A company undertaking life insurance may, by resolution passed at a special general meeting called for such purpose, provide that subsections 165(2), (3) and (4) and sections 167 and 168 apply to such company.

146. Amalgamation.—Subject to the approval of the agreement of amalgamation under the *Insurance Act*, section 113 of this Act applies to the amalgamation of two or more joint stock insurance companies.

147. (1) Amalgamation, etc., of mutual corporation and joint stock corporation.—Subject to the *Insurance Act*, a mutual corporation incorporated under the laws of Ontario transacting life insurance may amalgamate with or transfer its contracts to or reinsure such contracts with any licensed insurer transacting life insurance and may enter into all agreements necessary to such amalgamation, transfer or reinsurance.

(2) **Confirmation of agreement.**—Despite anything in its Act or instrument of incorporation or in its constitution and by-laws, the board of directors may enter into any such agreement on behalf of the mutual corporation through its president and secretary, but no such agreement is binding or effective unless evidence satisfactory to the Superintendent is produced showing that the agreement has been confirmed by a vote of the majority of the members present or duly represented by proxy at a general or special general meeting of the mutual corporation and unless the agreement has been approved by the Lieutenant Governor in Council under the *Insurance Act*.

(3) **Agreement binding on all members of mutual corporation.**—Despite anything in its Act or instrument of incorporation or in its constitution and by-laws, or in any policy or certificate or other document evidencing a contract issued by a mutual corporation, or in the constitution or laws of or certificates issued by a fraternal society whose contracts have been assumed by the mutual corporation or for which the mutual corporation has become responsible, the terms of any such agreement so confirmed and approved are valid and binding as of the date stipulated in the agreement upon all the members of the mutual corporation and upon their beneficiaries and legal representatives and upon all persons deriving legal rights from any such member or beneficiary so long as they do not involve any new or increased rates of contribution or premium, and the claims of all persons under any such contract of insurance shall be restricted to such benefits only as are continued in accordance with the terms of such agreement, and such contracts shall be deemed to be amended accordingly.

(4) **Standards of valuations.**—Upon the coming into force of any such agreement, the reinsurer, in complying with the requirements of the *Insurance Act* in respect of the

valuation of contracts so reinsured or transferred, is entitled to base its valuation upon such tables of mortality and upon such rates of interest as would have been authorized by law for such mutual corporation if no such agreement had been made.

148. (1) Incorporation of mutual and cash-mutual insurance corporations.—A mutual or cash-mutual corporation may be incorporated for the purpose of undertaking and transacting any class of insurance for which a mutual or cash-mutual insurance corporation may be licensed under the *Insurance Act*.

(2) **Idem.**—A mutual insurance corporation may be incorporated for the purpose of undertaking contracts of fire insurance on the premium note plan upon agricultural property, weather insurance or live stock insurance.

(3) **Corporation for reinsurance.**—A mutual insurance corporation, all the members of which are mutual or cash-mutual corporations, may be incorporated for the purpose of reinsuring contracts of insurance and such a corporation may enter into contracts of reinsurance for the purpose of retroceding all or part of reinsurance contracts entered into by it.

149. (1) Incorporation of mutual fire insurance corporation.—Ten residents in any county or district may call a meeting of the residents thereof to consider whether it is expedient to establish therein a mutual fire insurance corporation to undertake contracts of fire insurance on the premium note plan upon agricultural property.

(2) **Advertisements calling meeting.**—The meeting shall be called by advertisement, stating the time, place and object of the meeting, and the advertisement shall be published once in *The Ontario Gazette* and at least once a week for three consecutive weeks in a newspaper published in the county or district.

(3) **Subscription book.**—If thirty residents are present at the meeting and a majority of them determine that it is expedient to establish a mutual fire insurance corporation, they may elect from among themselves three persons to open and keep a subscription book in which owners of real or personal property in Ontario may sign their names and enter the sum for which they respectively bind themselves to effect insurance in the corporation.

(4) **When meeting may be called.**—When 100 or more of such owners have signed their names in the subscription book and bound themselves to effect insurance in the corporation amounting in the aggregate to \$250,000 or more, a meeting shall be called as hereinafter provided.

(5) **How meeting to be called.**—When the subscription has been completed, any ten of the subscribers may call the first meeting of the proposed corporation at such time and place in the county or district as they determine by sending a printed notice by mail, addressed to each subscriber at the subscribers post office address, at least ten days before the day of the meeting, and by advertisement in a newspaper having general circulation in the county or district.

(6) **Contents of notice.**—The notice and advertisement shall state the object of the meeting and the time and place at which it is to be held.

(7) **Election of directors.**—At such meeting, or at any adjournment of it, the name and style of the company, which shall include the word “mutual” or the word “mutuelle”, shall be adopted, an acting secretary appointed, a board of directors elected as hereinafter provided and a central and generally accessible place in the county or district at which the head office of the company is to be located.

(8) **Quorum of meeting.**—The presence of at least twenty-five of the subscribers is necessary to constitute a valid meeting.

(9) **First meeting of directors.**—As soon as convenient after the meeting, the acting secretary shall call a meeting of the board of directors for the election from among themselves of a president and a vice-president, for the appointment of a secretary and a treasurer or a secretary-treasurer or a manager and for the transaction of such other business as may be brought before the meeting.

(10) **Certain documents to be delivered.**—With the application for incorporation, the applicants shall produce to the Minister, certified as correct under the hands of the chair and secretary,

- (a) a copy of the minutes of the meeting, including all resolutions respecting the objects of the proposed corporation, its name and the location of its head office;
- (b) a copy of the subscription book;
- (c) a list showing the names and addresses of the directors elected and of the officers appointed; and
- (d) such further information as the Minister may require.

(11) **Production of originals.**—There shall also, for verification, be produced to the Minister, if requested, the originals of such documents.

(12) **Minister to ascertain correctness of proceedings.**—The Minister shall ascertain and determine whether the proceedings for the incorporation have been taken in accordance with this section and whether the subscriptions are genuine and by persons possessing property to insure.

(13) **Powers deemed in letters patent.**—A mutual insurance corporation incorporated for the purpose of undertaking contracts of fire insurance on the premium note plan or under a contract to which the Fire Mutual Guarantee Fund is applicable in accordance with section 166 of the *Insurance Act*, has the power, and its letters patent shall be deemed to include the power, to undertake all classes of insurance for which a joint stock insurance company may be licensed under the *Insurance Act*.

150. (1) Incorporation of mutual livestock insurance corporation.—Ten owners of livestock in any county or district may call a meeting of the owners of livestock to consider whether it is expedient to establish a livestock insurance corporation upon the mutual plan.

(2) **Organization.**—The mode of calling such meeting and the proceedings for the formation of the corporation shall be the same with necessary modifications as in the case of the formation of a mutual fire insurance corporation, except that the determination

that it is expedient to establish the corporation shall be by thirty residents of the county or district, being owners of livestock in Ontario, and that the meeting for the organization of the corporation shall not be held unless fifty owners of livestock in Ontario have signed their names to the subscription book and bound themselves to effect insurance in the corporation that in the aggregate amounts to \$50,000 or more.

(3) **Powers.**—The letters patent or supplementary letters patent shall limit the powers of a mutual livestock insurance corporation incorporated under this section to undertaking contracts of insurance on the premium note plan against loss of livestock by fire, lightning, accident, disease or any other means, except that of design on the part of the insured or by the invasion of an enemy or by insurrection.

151. (1) Incorporation of mutual weather insurance corporation.—Ten owners of agricultural property in any county or district may call a meeting of the owners of agricultural property to consider whether it is expedient to establish therein a weather insurance corporation upon the mutual plan.

(2) **Organization.**—The mode of calling such meeting and the proceedings for the formation of the corporation shall be the same with necessary modifications as in the case of the formation of a mutual fire insurance corporation, except that the determination that it is expedient to establish the corporation shall be by thirty residents of the county or district, being owners of agricultural property in Ontario, and that the meeting for the organization of the corporation shall not be held unless fifty owners of agricultural property in Ontario have signed their names to the subscription book and bound themselves to effect insurance in the corporation that in the aggregate amounts to \$50,000 or more.

(3) **Powers.**—The letters patent or supplementary letters patent shall limit the powers of a mutual weather insurance corporation incorporated under this section to undertaking contracts of insurance on the premium note plan on any kind of agricultural property or property that is not mercantile or manufacturing against loss or injury arising from such atmospheric disturbances, discharges or conditions as the contract of insurance specifies.

152. (1) Incorporation of cash-mutual insurance corporations.—Ten residents of any county or district may call a meeting of other residents thereof to consider whether it is expedient to establish a cash-mutual insurance corporation for the purpose of undertaking any class of insurance for which a cash-mutual corporation may be licensed under the *Insurance Act*.

(2) **Organization.**—The mode of calling such meeting and the proceedings for the formation of the corporation shall be the same with necessary modifications as in the case of a mutual fire insurance corporation undertaking contracts of fire insurance under the premium note plan, except that the determination that it is expedient to establish the corporation shall be by thirty residents of the county or district, and that the meeting for the organization of the corporation shall not be held unless fifty residents have signed the subscription book and bound themselves to effect insurance in the corporation that in the aggregate amounts to \$250,000 or more.

153. (1) When mutual company writing on the premium note plan may become a cash-mutual corporation.—A mutual insurance corporation incorporated for the purposes of undertaking contracts of insurance on the premium note plan that has a net surplus of assets over all liabilities of not less than \$500,000, may apply to the Lieutenant Governor in Council for the issue of supplementary letters patent converting it into a cash-mutual corporation in the manner provided in this Act.

(2) **Approval of members.**—The application shall be authorized by a resolution of three-fourths in number of the directors of the corporation and confirmed by the members of the corporation by vote representing at least 90 per cent of the members present at a special general meeting duly called for that purpose, but the application shall not be made until twenty-one days notice of the application has been given by sending the notice to each member at the member's latest address as shown on the books of the corporation.

(3) **Notice of application.**—Notice of intention to make the application and of the confirmation by the members of the corporation shall be published in at least four consecutive issues of *The Ontario Gazette* and in a newspaper having general circulation in the county or district in which the head office of the corporation is situate at least once a week for four consecutive weeks.

(4) **Certain documents to be delivered.**—With the application for supplementary letters patent, submitted under this section, the applicants shall produce to the Minister certified as correct under the hands of the chair and secretary,

- (a) a copy of the notice of the special meeting of the members of the corporation and the notices published in *The Ontario Gazette* and the newspaper;
- (b) a copy of the minutes of the special meeting of the members, including all resolutions respecting the objects of the proposed corporation, its name and the location of its head office;
- (c) a copy of the corporation's audited financial statement made up to a date not more than seven months prior to the date of the application;
- (d) a list of the proposed officers and directors of the cash-mutual corporation;
- (e) such further information as the Minister may require.

(5) **Report by Superintendent.**—The Superintendent shall report to the Minister whether the proceedings for supplementary letters patent are in accordance with this section and the requirements of the *Insurance Act*.

154. (1) When cash-mutual company may become a joint stock company.—A mutual or a cash-mutual corporation that has surplus assets, not including premium notes, sufficient to reinsure all its outstanding risks may apply to the Lieutenant Governor for the issue of supplementary letters patent converting it into a joint stock insurance corporation in the manner provided in this Act.

(2) **Approval of members.**—The application shall be authorized by a resolution of three-fourths in number of the directors of the corporation and confirmed by the

members of the corporation by vote representing at least 90 per cent of the members present at a special general meeting duly called for that purpose, but the application shall not be made until twenty-one days notice of the application has been given by sending the notice to each member at the member's latest address as shown on the books of the corporation.

(3) **Notice of application.**—Notice of intention to make the application and of the confirmation by the members of the corporation shall be published in at least four consecutive issues of *The Ontario Gazette* and in a newspaper having general circulation in the county or district in which the head office of the corporation is situate at least once a week for four consecutive weeks.

(4) **Priority of members in subscribing stock.**—A person who is a member of the corporation on the day of the meeting is entitled to priority in subscribing to the capital stock of the corporation for one month after the opening of the books of subscription in the ratio that the insurance held by the person bears to the aggregate of the unexpired risks then in force.

(5) **Certain documents to be delivered.**—With the application for supplementary letters patent, submitted under this section, the applicants shall produce to the Minister certified as correct under the hands of the chair and secretary.

- (a) a copy of the notice of the special meeting of the members of the corporation and the notices published in *The Ontario Gazette* and the newspaper;
- (b) a copy of the minutes of the special general meeting of members, including all resolutions respecting the objects of the proposed corporation, its name and the location of its head office;
- (c) a copy of the corporation's audited financial statement made up to a date not more than seven months prior to the date of the application;
- (d) a list of the proposed officers and directors of the corporation;
- (e) such further information as the Minister may require.

(6) **Report of Superintendent.**—The Superintendent shall report to the Minister whether the application for supplementary letters patent is in accordance with this section and the requirements of the *Insurance Act*.

155. Vesting of assets and preservation of liabilities.—A corporation formed under section 153 or 154 is answerable for all liabilities of the corporation from which it has been formed and may sue and be sued under its new corporate name, and the assets and property of the old corporation are vested in the new corporation from the date of its formation.

156. When distribution of assets among members permitted.—No mutual or cash-mutual insurance corporation that has ceased to do new business shall divide among its members any part of its assets, except income from investments, until it has performed or cancelled its policy obligations and upon proof to the Superintendent that such policy obligations have been performed or cancelled.

157. Application of ss. 158-173.—Sections 158 to 173 apply only to mutual and cash-mutual insurance corporations.

158. (1) Insured deemed member.—A person insured under a policy issued by a corporation shall, from the date upon which the insurance becomes effective, be deemed a member of such corporation.

(2) Member's liability.—No member is liable in respect of any claim or demand against the corporation beyond the amount unpaid on the member's premium note.

(3) Member withdrawing.—A member may, with the consent of the directors, withdraw from the corporation on such terms as the directors lawfully prescribe, subject to the *Insurance Act*.

159. (1) Annual meeting.—A meeting of the shareholders and members for the election of directors shall be held within the first two months of every year at such time and place as the by-laws of the corporation prescribe.

(2) Annual statement.—Before the election, the annual statement for the year ending on the previous 31st day of December shall be presented and read.

160. Failure to elect directors.—If an election of directors is not made on the day on which it ought to have been made, the corporation shall not for that cause be dissolved, but the election may be held on a subsequent day at a meeting to be called by the directors or as otherwise provided by the by-laws of the corporation, and in such case the directors then in office continue to hold office until their successors are elected.

161. (1) Notice of annual or special meetings.—Notice of every annual or special general meeting of the corporation shall be sent by mail to every shareholder and member and shall be published in a newspaper published at or near the place where the head office is located at least seven days before the day of the meeting.

(2) Power of directors.—The directors may call a general meeting of the corporation at any time.

(3) Annual statement to be sent to members.—The directors shall, at least seven days before the day of the annual meeting, send to each member by mail the annual statement for the year ending on the previous 31st day of December, which shall be certified by the auditors and shall be in the form prescribed by the regulations made under section 105 of the *Insurance Act*.

162. (1) Voting of members of mutual or cash-mutual insurance corporations.—A member of a mutual or cash-mutual insurance corporation who is not in arrear for any assessment or cash payment due by the member to the corporation is entitled at all meetings of the corporation to one vote if the amount of premium paid by the member annually is in excess of \$25 and no member is entitled to more than one vote.

(2) Where policy made to two or more persons.—Where a policy on the premium note plan is made to two or more persons, one only is entitled to vote, and the right of voting belongs to the one first named on the register of policyholders if the person is present or, if not present, to the one who stands second, and so on.

(3) **Where property insured by trustee board.**—Where property is insured by a trustee board, any member of the board or its secretary-treasurer duly appointed in writing pursuant to its resolution may vote on its behalf.

163. Right of mere applicants.—No applicant for insurance is competent to vote or otherwise take part in the corporation's proceedings until the applicant's application has been accepted by the directors.

164. (1) Qualifications of directors.—No person is eligible to be or shall act as a director unless he or she is a member of the corporation, insured therein for the time he or she holds office and entitled to a vote.

(2) **Where corporation has a share capital.**—Where the corporation has a share capital, not less than two-thirds of the directors shall also be holders of shares, each to an amount not less than \$1,000, upon which all calls have been paid.

(3) **Representation of corporations.**—The president or director of a member corporation that has the qualifications that would qualify an individual to be a director is eligible to be a director of the corporation.

(4) **Representation of partnerships.**—Where a partnership has the qualifications that would qualify an individual to be a director of the corporation, one member of the partnership is eligible to be a director of the corporation.

165. (1) Number of directors.—The board shall consist of six, nine, twelve or fifteen directors, to be determined by resolution passed at the meeting held under subsection 149(5).

(2) **Increase or decrease in number.**—The number of directors may from time to time be increased or decreased if so determined at a special general meeting of the corporation called for the purpose, or at an annual general meeting, if notice in writing of the intention to propose a by-law for that purpose at such annual meeting is given to the secretary of the corporation at least one month before the holding of the meeting, but the increased or decreased number of directors shall in any such case be six, nine, twelve or fifteen.

(3) **Notice of proposed change.**—Where such a notice has been given to the secretary, that fact shall be stated in the notice of the annual general meeting.

(4) **Copy of resolution and list of directors to be filed.**—With the copy of the by-law filed with the Superintendent there shall be filed a list of the directors elected thereunder certified under the hands of the chair and secretary of the meeting.

166. Filing by-laws for remuneration of directors.—At any annual general meeting of the shareholders or members of a corporation, or at any special general meeting thereof, if such purpose was clearly expressed in the notice of the special general meeting, it is lawful to pass by-laws for the remuneration of the directors, and a certified copy of every such by-law shall, within seven days after its passing, be filed with the Superintendent.

167. Retirement of directors in rotation.—One-third of the directors shall retire annually, in rotation, and, at the first meeting of the directors or as soon thereafter as

possible, it shall be determined by lot which of them shall hold office for one, two or three years respectively, and the determination shall be entered on the minutes of the meeting.

168. Annual election to fill vacancies.—At every annual general meeting thereafter, one-third of the total number of directors shall be elected for a period of three years to fill the places of the retiring directors, who are eligible for re-election.

169. Manager may be a director and be paid salary.—The manager of the corporation, even if he or she does not have the qualifications required by section 164, may be a director of the corporation and may be paid an annual salary under a by-law passed as provided by section 166.

170. Certain persons not eligible as directors.—No agent or paid officer, or officer of the bankers of the corporation, or person in the employment of the corporation, other than the manager, is eligible to be elected as a director or shall interfere in the election of directors.

171. (1) Election of directors.—The election of directors shall be held and made by such shareholders and members as attend for that purpose in person, or in the case of a corporation or partnership by a director, officer or member authorized in writing to represent it.

(2) Ballot.—The election shall be by ballot.

(3) Case of a tie at an election.—If two or more members have an equal number of votes so that less than the whole number to be elected appear to have been chosen directors by a majority of votes, the members present shall proceed to ballot until it is determined which of the persons so having an equal number of votes shall be the director or directors.

(4) Election of president and vice-president.—The directors shall, at their first meeting after any such election, elect by ballot from among themselves a president and vice-president, and the secretary shall preside at such election.

172. Interim vacancies.—If a vacancy occurs among the directors, during the term for which they have been elected, by death, resignation, ceasing to have the prescribed qualification, insolvency or by absence without previous leave of the directors from three successive regular meetings, which shall by reason of that fact create such vacancy, the vacancy, in the case of a board limited to six directors, shall be filled and, in the case of a board limited to a number of directors exceeding six, may be filled until the next annual general meeting by any person duly qualified chosen by a majority of the remaining directors as soon as may be after the vacancy occurs, and at the next annual general meeting the vacancy shall be filled for the portion of the term still unexpired.

173. (1) Quorum of directors.—A majority of the directors constitutes a quorum for the transaction of business, and, in the case of an equality of votes at any meeting, the question passes in the negative.

(2) Recording dissent.—A director disagreeing with the majority at a meeting may have his or her dissent recorded with the reasons therefor.

174. (1) Security of accountants.—Every officer or person appointed or elected to any office concerning the receipt or proper application of money shall furnish security for the just and faithful execution of the duties of the person's office according to the by-laws or rules of the corporation, and any person entrusted with the performance of any other service may be required to furnish similar security, and security so furnished and then subsisting shall be produced to the auditors at the annual audit.

(2) **Minimum security.**—The security given by the treasurer or other officer having charge of the money of the corporation shall not be less than \$5,000 or such greater amount as may be required by the by-laws of the corporation or by the Superintendent.

175. Amalgamation.—Subject to the approval of the agreement of amalgamation under the *Insurance Act*, section 113 applies with necessary modifications to the amalgamation of two or more mutual or cash-mutual insurance corporations.

176. (1) Incorporation of fraternal societies.—The Lieutenant Governor may in his or her discretion, by letters patent, issue a charter to any number of persons, not fewer than seventy-five, of eighteen or more years of age, five of whom apply therefor, constituting such persons and any others who have signed the membership book, and persons who thereafter become members in the fraternal society thereby created, a corporation for the purposes of undertaking any class of insurance for which a fraternal society may be licensed under the *Insurance Act*.

(2) **Notice.**—The applicants for incorporation, immediately before the application, shall publish in at least four consecutive issues of *The Ontario Gazette* notice of their intention to apply and shall also, if so required, publish elsewhere notice of such intention.

(3) **Particulars of application.**—The application for the incorporation of a fraternal society shall show,

- (a) its proposed name;
- (b) the place in Ontario where its head office is to be situate;
- (c) the name in full, the place of residence and the calling of each of the applicants who are to be its first trustees or managing officers;
- (d) such other information as the Minister requires.

(4) **Other documents.**—The application shall be accompanied by the original membership book or list containing the signatures duly certified of at least seventy-five persons who thereby agree to become members of the fraternal society if and when incorporated, by a copy of the proposed by-laws of the fraternal society and by evidence that the approval of the Superintendent to the proposed by-laws and rules has been obtained.

177. Organization meeting.—Within thirty days after the issue of the letters patent and upon due notice to all members of the society, an organization meeting of the society shall be held at which the by-laws shall be adopted and the officers of the society elected.

178. (1) Incorporation of foreign fraternal society.—Where a fraternal society licensed under the *Insurance Act* has its head office elsewhere than in Ontario, the grand

or other provincial body of the lodges or a majority of the lodges in Ontario may apply to the Lieutenant Governor for the issue of a charter and, from the time of the issue of the letters patent, the applicants become a corporation for the purpose of undertaking any class of insurance for which a fraternal society may be licensed under the *Insurance Act*.

(2) **Application s. 176(1).**—Subsection 176(1) applies to an incorporation under this section.

(3) **Approval of Superintendent.**—Before the issue of the letters patent, evidence shall be produced to the Minister that the approval of the Superintendent to the application has been secured.

179. Incorporation of local branch.—An auxiliary or local subordinate body or branch of a licensed fraternal society may be separately incorporated by like proceedings.

180. (1) Amalgamation or reinsurance by fraternal society.—Subject to the *Insurance Act*, any fraternal society may amalgamate with any other fraternal society or transfer all or any portion of its contracts to or reinsure them with any insurer licensed for the transaction of life insurance and may enter into all agreements necessary to such amalgamation, transfer or reinsurance.

(2) **Agreement for amalgamation, etc.**—Despite anything in its Act or instrument of incorporation or in its constitution and by-laws, the governing executive authority may enter into any such agreement on behalf of the society through its principal officer and secretary, but no such agreement is binding or effective unless evidence satisfactory to the Superintendent is produced showing that the principle of amalgamation, transfer or reinsurance has been approved and that the agreement has been confirmed by a vote of the majority of the members present or duly represented at a general or special meeting of the supreme legislative or governing body of the society duly called.

181. Confirmation of amalgamation.—Subsection 113(4) applies with necessary modifications to the amalgamation of two or more fraternal societies.

182. (1) Incorporation of mutual benefit society.—A mutual benefit society may be incorporated for the purpose of undertaking any class of insurance for which a mutual benefit society may be licensed under the *Insurance Act*, and the provisions of this Part relating to fraternal societies apply with necessary modifications to the incorporation of mutual benefit societies and to such societies when incorporated.

(2) **Name.**—The proposed name of a mutual benefit society incorporated under this Part shall include the words “mutual benefit” or the words “secours mutuel”.

183. Application of ss. 184-195.—Sections 184 to 195 apply to pension fund and employees’ mutual benefit societies incorporated under this Part.

184. Definitions.—In this section and in sections 185 to 195,

“**parent corporation**”,—“parent corporation” means a corporation any of whose officers establish a pension fund or employees’ mutual benefit society under this Part;

“**society**”,—“society” means a pension fund or employees’ mutual benefit society incorporated under this Part;

“**subsidiary corporation**” — “subsidiary corporation” means a corporation, wherever incorporated, at least 75 per cent of whose issued common shares are owned by a parent corporation.

185. (1) Charter by letters patent.—The Lieutenant Governor may in his or her discretion, by letters patent, issue a charter to any number of persons, not fewer than five, of eighteen or more years of age, two of whom are officers of a corporation legally transacting business in Ontario who apply therefor, constituting such persons and the employees of such corporation and of its subsidiary corporations who join the society and those who replace them from time to time a pension fund or employees’ mutual benefit society corporation.

(2) Contents of application.—The application for the incorporation of a pension fund or employees’ mutual benefit society shall show,

- (a) its proposed name;
- (b) the name of its parent corporation;
- (c) the place in Ontario where its head office is to be situate;
- (d) the name in full and place of residence and calling of each of the applicants; and
- (e) the names, not fewer than five, of those who are to be its first directors.

(3) Notice.—Notice of the application for incorporation of a society shall be published in at least four consecutive issues of *The Ontario Gazette* and the notice shall state,

- (a) its proposed name;
- (b) the place in Ontario where its head office is to be situate; and
- (c) the name of its secretary.

186. First meeting.—The first directors have power to call the first meeting of the society and at such meeting directors may be elected and by-laws may be passed under this Act, and a copy of such by-laws shall be filed with the Minister within two weeks after the passing thereof, and copies of subsequent by-laws in amendment thereof, in addition thereto or diminution therefrom, shall also be filed with the Minister within two weeks after the passing thereof.

187. (1) Directors.—The affairs of the society shall be administered by a board of directors who shall be appointed or elected in such manner, in such number, with such qualifications and for such period as are determined by the by-laws, but at the first meeting of the society five directors shall be elected, subject to addition to such number if so sanctioned by the by-laws, and other officers may be appointed in such manner with such remuneration and under such provisions touching their powers and duties as are established by the by-laws.

(2) Management of fund by trust corporation.—The board of directors may by by-law entrust the whole or a part of the fund of the society to a trust corporation licensed under the law of Ontario and may delegate to such trust corporation all or any of its powers and discretions relating to the custody and management of the fund.

188. (1) Definition.—In this section, “dependants” means the wives, husbands, and children under eighteen years of age, including adopted children, of officers or employees within the meaning of this section.

(2) Powers and objects of society.—After its incorporation, every pension fund and employees’ mutual benefit society has the power, by means of voluntary contribution or otherwise as its by-laws provide, to form a fund or funds and may invest, hold and administer the same and may therefrom,

- (a) provide for the support and payment of pensions and other benefits to officers and employees of the parent corporation and its subsidiary corporations who have retired or who cease to be employed by the parent corporation or one of its subsidiary corporations;
- (b) provide, in such manner as the by-laws specify, for the payment of pensions, annuities, gratuities or other benefits to the widows, widowers and children or other surviving relatives or legal representatives of officers and employees or retired officers and employees of the parent corporation and its subsidiary corporations who have died;
- (c) provide for the payment of benefits to officers and employees of the parent corporation or one of its subsidiary corporations by reason of illness, accident or disability;
- (d) provide for the payment of benefits by reason of illness, accident or disability to former officers and employees of the parent corporation and its subsidiary corporations who are retired;
- (e) provide for the payment of benefits to officers and employees or retired officers and employees of the parent corporation or one of its subsidiary corporations in respect of illness, accident or disability affecting dependants of such officers or employees; and
- (f) upon the death of such officers or employees, pay a funeral benefit in such manner as the by-laws specify.

189. (1) Power to pass by-laws.—A pension fund and employees’ mutual benefit society has all corporate powers necessary for its purposes and may pass by-laws not contrary to law defining and regulating in the premises, and prescribing the mode of enforcement of, all the rights, powers and duties of,

- (a) the society;
- (b) its individual members;
- (c) the officers and employees of the parent corporation and its subsidiary corporations;
- (d) the widows, widowers and children or other surviving relatives, or the personal representatives of such officers and employees; and
- (e) the parent corporation.

(2) **Additional by-laws.**—Every such society may also make by-laws as aforesaid for,

- (a) the formation and maintenance of the fund;
- (b) the management and distribution of the fund;
- (c) the enforcement of any penalty or forfeiture in the premises; and
- (d) the government and ordering of all business and affairs of the society.

(3) **Sanction of parent and ordering of all corporation.**—No such by-law is effective unless it has been sanctioned by the board of directors of the parent corporation.

190. By-laws defining rights and remedies of beneficiaries, etc.—All the powers, authority, rights, penalties and forfeitures whatever the society or of its members, officers or employees, or of such widows, widowers and children or other surviving relatives or legal representatives, or of the parent corporation shall be such and such only and may be enforced in such mode and in such mode only, as by such by-laws are defined and limited.

191. Revenue.—All the revenue of the society, from whatever source derived, shall be devoted exclusively to the maintenance of the society and the furtherance of the objects of the fund and to no other purpose.

192. Contribution by parent corporation.—The parent corporation may contribute annually or otherwise to the funds of the society by a vote of its directors or its shareholders.

193. Prohibition against member assigning interest.—The interest of a member in the funds of the society is not transferable or assignable by way of pledge, hypothecation, sale, security or otherwise.

194. (1) Special audit.—Where it is shown to the satisfaction of the Minister that the accounts of a society have been materially or wilfully falsified, or where there is filed in the office of the Minister a requisition for audit bearing the signatures, addresses and callings of at least 25 per cent of the members of the society and alleging in a sufficiently particular manner to the satisfaction of the Minister specific fraudulent or illegal acts, or the repudiation of obligations, or insolvency, the Minister may appoint one or more accountants or actuaries who shall, under the Minister's direction, make a special audit of the books and accounts and report thereon in writing verified upon oath to the Minister.

(2) **Security for costs.**—Where an audit is requested, the persons requesting it shall, with their requisition, deposit with the Minister security for the costs of the audit in such sum as the Minister fixes, and, where the facts alleged in the requisition appear to the Minister to have been partly or wholly disproved by the audit, he or she may pay the costs thereof partly or wholly out of the deposit.

(3) **Duty to facilitate special audit.**—The society, its officers and servants shall facilitate the making of such special audit so far as it is in their power and shall produce for inspection and examination by the person so appointed such books, securities and documents as the person may require.

(4) **Expense of special audit.**—Subject to subsection (2), the expense of such special audit shall be borne by the society, and the auditor's account, when approved in writing by the Minister, shall be paid by the society forthwith.

195. Return to Minister.—A society formed under this Act shall at all times when thereunto required by the Minister make a full return of its assets and liabilities and of its receipts and expenditures for such period and with such details and other information as the Minister may require.

196. (1) When charter to be forfeited for non-user or discontinuance.—If an insurer incorporated under the law of Ontario, whether under this Act or under any general or special Act, does not go into actual operation within two years after incorporation, or if, after an insurer has undertaken contracts, such insurer discontinues business for one year, or if its licence remains suspended for one year, or is terminated otherwise than by effluxion of time and is not renewed within the period of sixty days, the insurer's corporate powers by reason of that fact cease and determine, except for the sole purpose of winding up its affairs, and in any action or proceeding in which such non-user is alleged, proof of user is upon the insurer, and the Court, upon the petition of the Attorney General or of any person interested, may limit the time within which the insurer is to settle and close its accounts, and may, for that purpose or for the purpose of liquidation generally, appoint a receiver.

(2) **Rights of creditors.**—No such forfeiture affects prejudicially the rights of creditors as they exist at the date of the forfeiture.

197. Definition.—In sections 198 to 204, "shareholder" includes member and participating policyholder eligible to vote for a policyholders' director.

198. (1) Information laid before annual meetings of life insurers.—The directors of an insurer undertaking and transacting life insurance shall lay before each annual meeting of shareholders,

- (a) a financial statement for the period commencing on the date of incorporation and ending not more than six months before such annual meeting or commencing immediately after the period covered by the previous financial statement and ending not more than six months before such annual meeting, as the case may be, made up of,
 - (i) a statement of revenue and expenditure for such period,
 - (ii) a statement of surplus for such period,
 - (iii) a balance sheet made up to the end of such period;
- (b) the report of the auditor to the shareholders;
- (c) such further information respecting the financial position of the insurer as the letters patent, supplementary letters patent or by-laws of the insurer require.

(2) **Contents of financial statement.**—The statements referred to in the subclauses of clause (1)(a) shall comply with and be governed by sections 199 to 203, but it is not

necessary to designate them the statement of revenue and expenditure, statement of surplus and balance sheet.

(3) **Incorporation of statements.**—The statement of surplus referred to in subclause (1)(a)(ii) and the information required by subsections 200(2) and (3) may be incorporated in and form part of the statement of revenue and expenditure referred to in subclause (1)(a)(i).

(4) **Auditor's report to be read.**—The report of the auditor to the shareholders shall be read at the annual meeting and shall be open to inspection by any shareholder.

199. (1) Statement of revenue and expenditure.—The statement of revenue and expenditure to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the insurer for the period covered by the statement and so as to distinguish severally at least,

- (a) premium income;
- (b) income from invested assets;
- (c) profit or loss from sale of invested assets;
- (d) amounts by which values of invested assets are increased or decreased;
- (e) payments to policyholders and beneficiaries, other than the disbursement of moneys previously left on deposit;
- (f) increase or decrease in actuarial liability under insurance and annuity contracts;
- (g) total remuneration of directors as such from the insurer, including all salaries, bonuses, fees, contributions to pension funds and other emoluments;
- (h) premium taxes;
- (i) head office, agency, investment and other operating expenses;
- (j) the amount transferred to or from general surplus.

(2) **Notes.**—Despite subsection (1), items of the natures described in clauses (1)(d) and (g) may be shown by way of note to the statement of revenue and expenditure.

200. (1) Statement of surplus.—The statement of surplus shall be drawn up so as to present fairly the transactions reflected in it and shall show separately a statement of general surplus and a statement of shareholders' surplus, howsoever designated.

(2) **General surplus.**—The statement of general surplus shall be drawn up so as to distinguish at least the following items:

1. The balance of each amount making up the total of general surplus as shown in the balance sheet at the end of the preceding financing period.
2. The additions to and deductions from such surplus during the financial period and, without restricting the generality of the foregoing, at least the following:
 - i. The amount shown on the statement of revenue and expenditure as transferred to or from general surplus.

- ii. The amount of surplus arising from the issue of shares or the reorganization of the insurer's issued capital, including,
 - (a) the amount of premiums received on the issue of shares at a premium;
 - (b) the amount of surplus realized on the purchase for cancellation of shares.
- iii. Donations of cash or other property by shareholders.

- 3. The balance of each amount making up such general surplus as shown in the balance sheet at the end of the financial period.

(3) **Shareholders' surplus.**—The statement of shareholders' surplus shall be drawn so as to distinguish at least the following items:

- 1. The balance of such surplus as shown in the balance sheet at the end of the preceding financial period.
- 2. The additions to and deductions from such surplus during the financial period and, without restricting the generality of the foregoing, at least the following:
 - i. The amount transferred to or from general surplus.
 - ii. Provision for taxes on income.
 - iii. The amount of dividends declared on each class of shares.
- 3. The balance of such surplus as shown in the balance sheet at the end of the financial period.

201. (1) Balance sheet.—The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the insurer as at the date to which it is made up and so as to distinguish severally at least the following:

- 1. The invested assets of the insurer as described in Part XVII of the *Insurance Act*, severally designated as follows:
 - i. Cash.
 - ii. Preference and common shares.
 - iii. Bonds and debentures.
 - iv. Mortgages.
 - v. Real estate held for sale.
 - vi. Real estate held for the production of income.
 - vii. Head office buildings.
 - viii. Agreements for sale.
 - ix. Loans on policies.
 - x. Other invested assets stating their nature.
- 2. Other assets of the insurer distinguishing severally at least the following:

- i. Net outstanding premiums due and deferred.
 - ii. Interest and rents due and accrued.
 - iii. Debts owing to the insurer from its shareholders except debts of reasonable amount arising in the ordinary course of the insurer's business that are not overdue having regard to the insurer's ordinary terms of credit.
 - iv. The aggregate amount of any outstanding loans under clauses 24(2)(c), (d) and (e).
3. The actuarial liability under insurance and annuity contracts.
4. Bank loans and overdrafts.
5. Provision for unpaid and unreported claims.
6. All other liabilities to policyholders.
7. Debts owing by the insurer on loans from its directors, officers or shareholders.
8. Commissions and other debts owing by the insurer segregating those that arose otherwise than in the ordinary course of business.
9. Deferred income.
10. Liability for taxes.
11. Dividends on capital stock declared but not paid.
12. The authorized capital, giving the number of each class of shares and a brief description of each such class and indicating therein any class of shares which is redeemable and the redemption price thereof.
13. The issued capital, giving the number of shares of each class issued and outstanding and the amount received therefor that is attributable to capital, and showing,
 - (a) the number of shares of each class issued since the date of the last balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration; and
 - (b) where any shares have not been fully paid,
 - (i) the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and
 - (ii) the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.
14. Reserves, as described in clauses 204(1)(a), (b) and (c), showing the amounts added thereto and the amounts deducted therefrom during the financial period.
15. The amounts making up the surplus of the insurer severally designated as follows:

- i. General surplus.
- ii. Shareholders' surplus.
- iii. Other surplus balances indicating their nature.

(2) **Notes.**—Despite subsection (1), particulars of the items described in paragraphs 12 and 13 of subsection (1) may be shown by way of note to the balance sheet.

(3) **Idem.**—The basis of valuation of the invested assets of the insurer shall be shown by way of note to the balance sheet.

202. (1) Notes to financial statement.—There shall be stated by way of note to the financial statement particulars of any change in accounting or actuarial principle or practice or in the method of applying any accounting or actuarial principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the results of operations for the period.

(2) **Idem.**—Where applicable, the following matters shall be referred to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the insurer.
3. Contractual obligations that will require abnormal expenditures in relation to the insurer's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
5. Any liability secured otherwise than by operation of law on any asset of the insurer, stating the liability so secured, but it is not necessary to specify the asset on which the liability is secured.
6. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
7. Where an insurer has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
8. Any restriction by the letters patent, supplementary letters patent or by-laws of the insurer or by contract on the payment of dividends that is significant in the light of the insurer's financial position.

(3) **Idem.**—Every note to a financial statement is an integral part of it.

203. Insignificant circumstances.—Despite sections 199 to 202, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance.

204. (1) Reserves.—In a financial statement, the term “reserve” shall be used to describe only,

- (a) amounts appropriated from surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from surplus pursuant to the instrument of incorporation, instrument amending the instrument of incorporation or by-laws of the insurer for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from surplus in accordance with the terms of a contract and which can be restored to the surplus when the conditions of the contract are fulfilled.

(2) **Idem.**—Despite subsection (1), the term “reserve” may be used to describe the actuarial liability under insurance and annuity contracts.

205. Auditor’s report, joint stock insurance companies and cash mutuals.—The auditor of a joint stock insurance company or a cash mutual insurance corporation shall in the report required to be made by subsection 96(2) also make such statements as the auditor considers necessary,

- (a) if, in the case of corporations transacting other than life insurance, the provision for unearned premiums is not calculated as required by the *Insurance Act*;
- (b) if the provision for unpaid claims, in the auditor’s opinion, is not adequate;
- (c) if the financial statement includes as assets items prohibited by the *Insurance Act* from being shown in the annual statements required to be filed thereunder; or
- (d) if any of the transactions of the corporation that have come to the auditor’s notice have not been within its powers.

206. Delivery of by-laws to Superintendent.—Every insurer shall deliver to the Superintendent within one month after passing thereof, a certified copy of its by-laws and of every repeal or addition to or amendment or consolidation thereof.

207. Balance sheets and statements.—A copy of every balance sheet or other statement published or circulated by an insurer, purporting to show its financial condition, shall be mailed or delivered to the Superintendent, concurrently with its issue to its shareholders or policyholders, or to the general public.

208. Offence.—A person who fails to comply with section 205, 206 or 207 shall be deemed to be guilty of an offence under the *Insurance Act*.

209. Directors of joint stock insurance company, qualifications.—Subject to section 210, no person is eligible to become or shall be elected a director of a joint stock

insurance company unless he or she is eighteen or more years of age and holds in his or her own name and for his or her own use and absolutely in his or her own right shares of the capital stock of the company upon which at least \$500 has been paid into the capital account of the corporation and has paid in cash all calls and instalments due thereon and all liabilities incurred by him or her to the company.

210. (1) Shareholders' directors; policyholders' directors.—A joint stock life insurance company may by by-law, provide that the affairs of the company shall be managed by a board of directors of whom a specified number, herein called shareholders' directors, shall be elected by the shareholders of the company, and a specified number, herein called policyholders' directors, shall be elected by those persons, herein called participating policyholders, whose lives are insured under a participating policy or participating policies of the company for at least \$2,000 upon which no premiums are due, whether or not any such person is a shareholder of the company.

(2) Number of directors; vacancies.—A by-law passed under subsection (1) shall provide for the election of not fewer than nine and not more than twenty-one directors, of whom not fewer than one-third shall be policyholders' directors, and any vacancy occurring in the board of directors may be filled for the remainder of the term by the directors.

(3) Participating policyholders' right to vote.—Participating policyholders are entitled to attend and vote in person and not by proxy at all general meetings of the company, but as such are not entitled to vote for the election of shareholders' directors, but this section does not confer rights or impose liabilities on such participating policyholders in a liquidation of the company.

(4) Policyholders' director, qualifications.—A holder of a participating policy or participating policies of the company for at least \$4,000 exclusive of bonus additions, upon which no premiums are due, who is not a shareholder and who has paid premiums on such policy or policies for at least three full years is eligible for election as a policyholders' director.

(5) Annual meeting.—Such a life insurance company shall have a fixed time in each year for its annual meeting and such time shall be printed in prominent type on each premium notice or each premium receipt issued by the company, and, in addition to all other notices required to be given by this Act, it shall give fifteen days notice of such meeting in two or more daily newspapers published at or as near as may be to the place where the company has its head office.

211. Conversion of joint stock life companies into mutual companies.—Despite anything in the letters patent incorporating the company or in its by-laws or in this Act, a joint stock life insurance company may, with the permission of the minister charged with the administration of the *Insurance Act*, establish and implement a plan for the conversion of the company into a mutual company by the purchase of shares of the capital stock of the company in accordance with the Schedule to this Act.

212. Definitions.—In sections 213 to 224,

“deposit”.—“deposit” means the deposits required under section 67 of the *Insurance Act*;

“insured person”.—“insured person” means a person who enters into a subsisting contract of insurance with an insurer and includes,

- (a) every person insured by a contract whether named or not,
- (b) every person to whom or for whose benefit all or part of the proceeds of a contract of insurance are payable, and
- (c) every person entitled to have insurance money applied toward satisfaction of the person’s judgment in accordance with section 258 of the *Insurance Act*;

“loss”.—“loss” includes the happening of an event or contingency by reason of which a person becomes entitled to a payment under a contract of insurance of money other than a refund of unearned premiums;

“Minister”.—“Minister” means the member of the Executive Council charged for the time being by the Lieutenant Governor in Council with the administration of the *Insurance Act*;

“Ontario contract”.—“Ontario contract” means a subsisting contract of insurance that,

- (a) has for its subject,
 - (i) property that at the time of the making of the contract is in Ontario or is in transit to or from Ontario, or
 - (ii) the life, safety, fidelity or insurable interest of a person who at the time of the making of the contract is resident in Ontario or of an incorporated company that has its head office in Ontario, or
- (b) makes provision for payment thereunder primarily to a resident of Ontario or to an incorporated company that has its head office in Ontario;

“reciprocal deposit”.—“reciprocal deposit” means a deposit of an insurer held under section 95 or 96 of the *Insurance Act*;

“reciprocating province”.—“reciprocating province” means a province that has been declared to be a reciprocating province under paragraph 1 of subsection 95(1) or subsection 96(1) of the *Insurance Act*, with respect to the deposit of a particular insurer.

213. (1) Application of Part VI.—The provisions of Part VI relating to the winding up of corporations apply to insurers incorporated under or subject to this Act except where inconsistent with this Part.

(2) **Definition.**—Where the company, corporation or society is not constituted exclusively or chiefly for insurance purposes and the insurance branch and fund are completely severable from every other branch and fund of the company, corporation or

society, the word “insurer” for the purposes of sections 214 to 227 means only the insurance branch of the company, corporation or society.

214. (1) Winding up by order of court on application of Superintendent.—An insurer incorporated in Ontario may also be wound up by order of the court on the application of the Superintendent, if the court is satisfied that,

- (a) the insurer has failed to exercise its corporate powers during any continuous period of four years;
- (b) the insurer has not commenced business or gone into actual operation within four years after it was incorporated;
- (c) the insurer has discontinued business for one year after it has undertaken insurance contracts within the meaning of the *Insurance Act*;
- (d) the insurer’s licence has been suspended for one year or more;
- (e) the insurer has carried on business or entered into a contract or used its funds in a manner or for a purpose prohibited or not authorized by the *Insurance Act* or by its Act of incorporation or by any special Act applicable thereto; or
- (f) other sufficient cause has been shown.

(2) Approval of Lieutenant Governor in Council.—No such application shall be made by the Superintendent without the approval of the Lieutenant Governor in Council.

(3) Application of Part VI.—Upon the making of an order under this section, the provisions of Part VI relating to the winding up of a corporation, in so far as they are not inconsistent with this Part, apply.

215. (1) Provisional liquidator appointment.—In the case of an insurer incorporated in Ontario,

- (a) if its licence expires and,
 - (i) the insurer fails to renew within the period limited by the *Insurance Act*,
or
 - (ii) a renewal is refused; or
- (b) if its licence is cancelled,

the Minister may appoint a provisional liquidator who shall take charge of the affairs of the company and may direct that it be wound up forthwith under this Act.

(2) Powers.—Until a permanent liquidator is appointed, the provisional liquidator shall exercise all the powers of the insurer and none of the officers or servants of the insurer shall make any contract for, incur any liability on behalf of, or expend any money of, the insurer without the approval of the provisional liquidator.

(3) Petition by provisional liquidator for winding-up order.—The provisional liquidator shall petition the court for a winding-up order, and, if the court is of the opinion

that it is just and equitable so to do, it may make an order winding up the company and thereupon the provisions of this Act relating to the winding up of a corporation, in so far as they are not inconsistent with this Part, apply.

(4) **Sale of business.**—The provisional liquidator or the liquidator, despite this Act, but, subject to the approval of the court, may sell the business and undertaking of the company as a going concern.

216. (1) Remuneration of provisional liquidator.—The remuneration to be paid to a provisional liquidator appointed under subsection 215(1) shall be fixed by the Minister.

(2) **Payment of costs of provisional liquidator.**—The remuneration and all expenses and outlay in connection with the appointment of the provisional liquidator, together with all expenses and outlay of the provisional liquidator while the provisional liquidator acts in that capacity, shall be borne and paid by the insurer and form a first lien or charge upon the assets of the insurer, other than the deposit, unless otherwise directed under subsection (3).

(3) **Payment of cost of provisional liquidator out of deposit.**—The Minister in his or her discretion may direct that the remuneration, expenses and outlay shall be paid out of the proceeds of the deposit made by the insurer, and in that case the amount directed to be paid has the same priority as the expenses of the receiver administering the deposit as fixed by clause 84(a) of the *Insurance Act*.

217. (1) Notice of intention to cease writing insurance or to consider voluntary liquidation.—When an insurer incorporated under or subject to the law of Ontario proposes to cease writing insurance or to call a general meeting to consider a resolution for its voluntary liquidation under this Act, it shall give at least one month's notice in writing thereof to the superintendent of insurance of each province in which the insurer is licensed.

(2) **Notice to Superintendent of voluntary winding up.**—When an insurer has passed a resolution for voluntary winding up, the insurer shall notify the Superintendent thereof and of the date on which contracts of insurance will cease to be entered into by the insurer and of the name and address of its liquidator.

(3) **Publication of notice.**—The notice under subsection (2) shall also be published by the insurer in two consecutive issues of *The Ontario Gazette* and the official gazette of each other province in which the insurer is licensed and in such newspapers and other publications as the Superintendent may require.

218. (1) Reinsurance.—The provisional liquidator or the liquidator, before any order granting administration of the deposit and before the fixing of a termination date pursuant to section 220, may arrange for the reinsurance of the subsisting contracts of insurance of the insurer with some other insurer licensed in Ontario.

(2) **Funds available for reinsurance.**—For the purpose of securing the reinsurance, the following funds shall be available:

1. The entire assets of the insurer in Ontario other than the deposit except the amount reasonably estimated by the provisional liquidator or the liquidator as being required to pay,
 - (a) the costs of the liquidation or winding up;
 - (b) all claims for losses covered by the insurer's contracts of insurance of which notice has been received by the insurer or provisional liquidator or liquidator before the date on which the reinsurance is effected;
 - (c) the claims of the preferred creditors who are the persons paid in priority to other creditors under the winding-up provisions of this Act,all of which shall be a first charge on the assets of the insurer, other than the deposit.
2. All or such portion, if any, of the deposit as is agreed upon pursuant to subsection (3).

(3) **Agreement for use of deposit for reinsurance.**—If it appears necessary or desirable to secure reinsurance for the protection of insured persons entitled to share in the proceeds of the deposit, the Minister, on the recommendation of the Superintendent, or, in the case of a reciprocal deposit, the superintendents of insurance of the reciprocating provinces, may enter into an agreement with the provisional liquidator or the liquidator, whereby, pursuant to section 73 or 97 of the *Insurance Act*, all or any part of the securities in the deposit may be used for the purpose of securing the reinsurance.

(4) **Payments to creditors other than preferred creditors.**—The creditors of the insurer, other than the insured persons and the said preferred creditors, are entitled to receive a payment on their claims only if provision has been made for the payments mentioned in subsection (2) and for the reinsurance.

(5) **Reinsurance of part of contracts.**—If, after providing for the payments mentioned in subsection (2), the balance of the assets of the insurer, together with all or such portion, if any, of the deposit as is agreed upon under subsection (3), is insufficient to secure the reinsurance of the contracts of the insured persons in full, the reinsurance may be effected for such portion of the full amount of the contracts as is possible.

(6) **Approval.**—No contract of reinsurance shall be entered into under this section until it is approved by the court.

219. (1) Transfer of deposit from receiver to provisional liquidator or liquidator.—In the winding up of an insurer that has made a deposit pursuant to the *Insurance Act*, if the person appointed as receiver to administer the deposit pursuant to section 76 of the *Insurance Act* is not the person appointed as the provisional liquidator or the liquidator under the *Insurance Act* or this Act or appointed as the liquidator under the *Winding-up Act* (Canada), as the case may be, the court at any time in its discretion may order that the deposit and the administration thereof be transferred from the receiver to the provisional liquidator or the liquidator.

(2) **Administration of deposit.**—Upon the making of an order under subsection (1), the provisional liquidator or the liquidator shall administer the deposit for the benefit of the persons entitled to share in the proceeds thereof in accordance with the provisions of and the priorities set out in this Act.

(3) **Costs of administration of deposit.**—The amount payable to the provisional liquidator or the liquidator for administering the deposit and all costs and expenses incurred by the provisional liquidator in administering the deposit shall be paid out of the deposit in accordance with the priorities fixed by clause 84(a) of the *Insurance Act*, but the amount payable to the provisional liquidator or the liquidator and all costs and expenses incurred by the provisional liquidator or the liquidator in the winding up of the insurer shall not be paid out of the deposit but shall be paid out of and are a first charge on the assets of the insurer except as provided in subsection 216(3).

220. (1) Termination date, where reinsurance not arranged.—If the provisional liquidator or the liquidator fails to secure reinsurance, or is of the opinion it is impracticable or inexpedient to arrange for reinsurance, the provisional liquidator or the liquidator,

- (a) with the approval of the court and subject to such terms as are prescribed by it; and
- (b) for the purpose of securing the payment of existing claims and avoiding further losses,

may publish a notice fixing a termination date for the subsisting contracts of insurance of such insurer, and on and after that date coverage and protection under the Ontario contracts cease and the insurer is not liable under any such contract for a loss that occurs after that date.

(2) **Termination of Ontario contracts, where termination date fixed in another province.**—Where a provisional liquidator or a liquidator has been appointed in another province to wind up an insurer incorporated in that province, and if such provisional liquidator or liquidator fixed a termination date for the contracts of insurance of the insurer, on and after that date coverage and protection under the Ontario contracts cease and determine and the insurer is not liable under any such contract for a loss that occurs after that date.

(3) **Where termination date fixed by receiver.**—Where a receiver administering a deposit has fixed a termination date under section 79 of the *Insurance Act*, the termination date fixed under this section applies only to those contracts of insurance not already terminated on the date fixed by the receiver.

221. Publication of notice of termination date.—The provisional liquidator or the liquidator shall cause the notice,

- (a) to be published in *The Ontario Gazette* and in the official gazette of each other province in which the insurer is licensed and in such newspapers as the court directs in order to give reasonable notice of the termination date so fixed; and
- (b) to be mailed to each policyholder at the policyholder's address as shown on the books and records of the company.

222. (1) Payment of claims for losses and preferred claims, etc..—The liquidator shall pay or set aside from the assets of the insurer sums in the liquidator's opinion sufficient to pay,

- (a) the costs of the liquidation or winding up;
- (b) all claims for losses covered by the insurer's contracts of insurance that occurred before the termination date fixed under section 79 of the *Insurance Act* or section 220 of this Act and that have not been paid or provided for in the administration of the deposit and of which notice has been received by the insurer or the liquidator;
- (c) the full amount of the legal reserve in respect of each unmatured life insurance contract; and
- (d) the claims of preferred creditors who are the persons paid in priority to other creditors under the winding-up provisions of this Act.

(2) Refund of unearned premiums.—Except in the case of life insurance, the assets remaining after payment or making provision for payment of the amounts mentioned in subsection (1) shall be used to pay the claims of the insured persons for refunds of unearned premiums on a proportionate basis in proportion to the periods of their contracts respectively unexpired on the termination dates to the extent that those claims have not been paid or provided for in the administration of the deposit.

(3) Calculation of unearned premium claims.—The claims of the insured persons for refunds of unearned premiums shall be calculated,

- (a) as at the termination date fixed under section 79 of the *Insurance Act* or section 220 of this Act; or
- (b) as at the date the insured person cancelled the contract,

whichever date is the earlier.

(4) Effect of refund.—The refund of all or a portion of the premium does not destroy or defeat any other remedy the insured person may have against the insurer in respect thereof or for any other cause.

(5) Effect of section.—Nothing in this section prejudices or affects the priority of any mortgage, lien or charge upon the property of the insurer.

223. Payment of provincial fees and taxes, etc.—The fees, taxes and costs payable by the insurer to each province shall be paid out of the assets of the insurer remaining after the reinsurance of the subsisting contracts of insurance of the insurer or after the payment of the claims of policyholders for refund of unearned premiums, as the case may be, and the balance shall be distributed among the creditors of the insurer other than the insured persons, preferred creditors and the several provinces.

224. (1) Filing of statements by liquidator.—Unless otherwise ordered by the court, within seven days after the close of each period of three months and until the affairs of the insurer are wound up and the accounts are finally closed, the liquidator shall file

with the court or other authority appointing him and also with the Superintendent detailed schedules, in such forms as is required, showing,

- (a) receipts and expenditures; and
- (b) assets and liabilities.

(2) **Production of books, etc., by liquidator.**—The liquidator, whenever he is required so to do by the authority appointing the liquidator or by the Minister, shall exhibit the office books and vouchers and furnish such other information respecting the affairs of the insurer as is required.

(3) **Offence.**—Every liquidator refusing or neglecting to furnish such information is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$200 and in addition is liable to be dismissed or removed.

225. (1) Distribution of endowment and expectancy funds.—Where a fraternal society transacts endowment or expectancy insurance and has an endowment fund separate and distinct from its life insurance fund, the society may, by resolution duly passed at a general meeting, after at least one month's notice of such intended resolution, determine that the endowment or expectancy shall be discontinued, and that the endowment or expectancy fund shall be distributed proportionately among the members then in good standing who are contributing to such fund according to the total contribution of such member.

(2) **Procedure.**—After the resolution has been assented to by the Superintendent and filed with the Minister, the executive officers may proceed to ascertain the persons intended to rank upon the fund and may distribute the fund among those so entitled, and such distribution discharges the society and all executive officers thereof from all further or other liability in respect of such fund and of the endowment or expectancy contracts undertaken by the society.

(3) **Merger of funds.**—If all the members interested in the endowment or expectancy fund are also interested as holders of life insurance contracts, the general meeting, instead of determining to distribute the endowment or expectancy fund, may determine to convert it into or merge it in a life insurance fund, and after the resolution has been assented to and filed as provided in subsection (2), the endowment or expectancy fund becomes a life insurance fund.

226. Extension of licence.—Despite anything in this Act or in the *Insurance Act*, where an insurer is being wound up voluntarily, the Superintendent may renew or extend the licence of the insurer for the purposes of its winding up.

227. Books, etc., as evidence.—The books, accounts and documents of an insurer and the entries in the books of its officers or liquidators are proof, in the absence of evidence to the contrary, of the matters to which they relate as between an alleged debtor or contributory and the insurer.

INVESTMENT CONTRACTS ACT

R.S.O. 1990, c. I.14

1. Definitions.—In this Act,

“filed”.—“filed” means filed under this Act;

“investment contract”.—“investment contract” means a contract, agreement, certificate, instrument or writing containing an undertaking by an issuer to pay the holder thereof, or the holder’s assignee, or personal representative, or other person, a stated or determinable maturity value in cash or its equivalent on a fixed or determinable date and containing optional settlement, cash surrender or loan values prior to or after maturity, the consideration for which consists of payment made or to be made to the issuer in instalments or periodically, or of a single sum, according to a plan fixed by the contract, whether or not the holder is or may be entitled to share in the profits or earnings of, or to receive additional credits or sums from, the issuer, but does not include a contract within the meaning of the *Insurance Act*;

“issuer”.—“issuer” means a corporation that offers for sale, sells, makes or enters into investment contracts of its own issue, but does not include an insurer within the meaning of the *Insurance Act* or a corporation within the meaning of the *Loan and Trust Corporations Act*;

“prescribed”.—“prescribed” means prescribed by the regulations;

“qualified assets”.—“qualified assets” means,

- (a) cash,
- (b) first mortgages on improved real estate and first mortgages made under the *National Housing Act* (Canada), or any predecessor thereof,
- (c) bonds, debentures, stocks and other securities of the classes authorized under the *Insurance Act* for the investment of the funds of joint stock insurance companies incorporated under the law of Ontario or authorized under the *Canadian and British Insurance Companies Act* (Canada) for the investment of the funds of companies registered thereunder,
- (d) real property acquired by foreclosure or in satisfaction of a debt and held for a period of less than seven years, and
- (e) such other investments or securities as are designed by the regulations;

“registered”.—“registered” means registered under this Act;

“regulations”.—“regulations” means the regulations made under this Act;

“salesperson”.—“salesperson” means a person employed, appointed or authorized by an issuer to sell investment contracts;

“Superintendent”.—“Superintendent” means the Superintendent of Insurance.

2. (1) Filing form of contract.—No person shall issue for sale or offer for sale or sell an investment contract unless a copy of the form thereof has been filed with the Superintendent.

(2) Forms not to be filed.—The Superintendent shall accept for filing a copy of the form of any investment contract tendered for filing unless the sale of investment contracts in such form would be inequitable or tend to work a fraud upon purchasers thereof or be against the public interest.

3. (1) Who may issue contract.—No person shall issue for sale an investment contract unless such person is registered as an issuer.

(2) Who may sell contract.—No person shall offer for sale or sell an investment contract unless such person is,

- (a) registered as an issuer;
- (b) recorded by the Superintendent as an executive officer of a registered issuer; or
- (c) registered as a salesperson.

4. What corporations may be registered.—No corporation shall be registered under this Act as an issuer unless,

- (a) there has been filed with the Superintendent,
 - (i) a certified copy of the Act, letters patent or other instrument of incorporation of the corporation,
 - (ii) a certified list of the names and addresses of the executive officers of the corporation,
 - (iii) a certified copy of the balance sheet of the corporation as at the close of its last completed fiscal year and its auditor's report thereon, and
 - (iv) copies of all forms of investment contracts proposed to be issued by the corporation for sale in Ontario;
- (b) at least \$100,000 of its authorized capital stock has been subscribed and paid in, in cash, and the aggregate of its unimpaired paid-in capital and its surplus amounts to at least \$200,000;
- (c) arrangements satisfactory to the Superintendent have been made for the deposit with a trust corporation, a bank listed in Schedule I or II to the *Bank Act* (Canada) or other suitable depository or depositories in Canada of qualified assets aggregating in amount, when valued as provided in section 20, not less at any time than the amount for which the corporation, under the terms of its investment contracts, is liable as of such time to pay in cash to the holders of all its investment contracts then outstanding, or aggregating such lesser amount as the Superintendent considers appropriate in the circumstances; except that, in the case of a corporation that maintains with a trust corporation, bank listed in Schedule I or II to the *Bank Act* (Canada) or other suitable depository or

depositories outside Ontario but in Canada a deposit or deposits of qualified assets in such an aggregate amount or other deposit satisfactory to the Superintendent, no further deposit shall be required.

5. (1) Registration requirements.—No person shall be registered as a salesperson unless there has been filed with the Superintendent a written notice to the Superintendent from a registered issuer that such person has been employed, appointed or authorized to sell investment contracts issued by such issuer.

(2) Suspension of registration.—Termination of the employment, appointment or authorization of a person employed, appointed or authorized to sell investment contracts issued by an issuer who has filed with the Superintendent a written notice pursuant to subsection (1) operates as a suspension of the registration of such person as a salesperson.

6. Application for registration.—Every application for registration shall be made to the Superintendent in writing upon the prescribed form and shall be accompanied by the prescribed fee.

7. Address for service.—Every applicant for registration shall state in the application an address for service in Ontario and all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated.

8. Renewal of registration.—Every registration and renewal of registration lapses on the 31st day of March, but any registered issuer or salesperson desiring renewal of registration shall on or before the 21st day of March make application for renewal of registration upon the prescribed form with the prescribed fee.

9. Granting of registration or renewal.—The Superintendent shall grant registration or renewal of registration,

- (a) to an issuer applying therefor where the applicant is suitable for registration and the sale of investment contracts issued by such issuer would not be inequitable or tend to work a fraud upon purchasers thereof or be against the public interest; and
- (b) to a salesperson applying therefor where the applicant is suitable for registration and the proposed registration is not objectionable.

10. Liability on contracts.—Every registered issuer shall, at all times,

- (a) maintain reserves for the payment of its outstanding investment contracts that, together with all future payments to be received by the issuer on such investment contracts, or the portions of such future payments still to be applied to reserves, and with accumulations of interest at an assumed rate provided in the contracts, such rate not to exceed a rate approved by the Superintendent, will attain the face or maturity value specified in the contracts when due, or the amount payable in accordance with the terms of the contracts; or
- (b) maintain reserves of such lesser amount as the Superintendent considers appropriate in the circumstances,

but such reserves shall at no time be less than the amount for which such registered issuer, under the terms of its investment contracts, is liable to pay in cash to the holders of all its investment contracts then outstanding.

11. Investment of funds.—Subject to section 12, a registered issuer may invest its funds only in investments in which a joint stock insurance company may invest its funds under Part XVII of the *Insurance Act*, or in investments in which a company registered under the *Canadian and British Insurance Companies Act* (Canada) may invest its funds.

12. (1) Power to acquire and hold real property.—A registered issuer may acquire and hold for its own use and benefit such real property as is necessary for the transaction of its business, and may acquire or hold or construct a building larger than is required for the transaction of its business and may lease any part of the building not so required.

(2) Idem.—A registered issuer may acquire and hold such real property as is, in good faith, mortgaged to it by way of security, and such real property as is acquired by it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of such real property, but such issuer shall sell any such last-mentioned real property within seven years after it has been so acquired.

13. (1) Suspension or cancellation of registration.—The Superintendent may suspend or cancel any registration upon any grounds that would justify refusal to grant registration or renewal of registration.

(2) Idem.—The Superintendent may suspend or cancel the registration of an issuer where it appears to the Superintendent from the statements and reports filed with him or her or from an inspection or valuation that the issuer will be unable to provide for the payment of its investment contracts at maturity.

14. Further application for registration.—Despite any order of the Superintendent, a further application may be made upon new or other material or where it is clear that material circumstances have changed.

15. (1) Appeal.—An applicant for registration or renewal of registration or any person who in the person's opinion is aggrieved by a decision of the Superintendent may appeal therefrom to the Divisional Court in accordance with the rules of court.

(2) Certificate.—The Superintendent shall certify to the Ontario Court (General Division) the decision appealed from, his or her reasons therefor, and the documents, inspection reports and evidence, if any, and such other information as the Superintendent had before him or her in making the decision.

16. (1) Filing statement.—Not later than thirty days after the expiration of each quarterly period ending March 31st, June 30th, September 30th and December 31st, every registered issuer shall file with the Superintendent a statement, certified to by its auditor or by such officer of the issuer as may be approved by the Superintendent, showing,

- (a) the amount on the last day of the quarterly period required by section 10 to be maintained as reserves by the issuer on all outstanding investment contracts;

(b) all qualified assets on deposit on the last day of the quarterly period last ended with the trust corporation, bank listed in Schedule I or II to the *Bank Act* (Canada) or other depositary or depositaries in Canada approved by the Superintendent and the value, when valued as provided in section 20, of such qualified assets as at such date; and

(c) such information as the Superintendent may require.

(2) **Filing balance sheet.**—Not later than ninety days after the expiration of its fiscal year, every registered issuer shall file with the Superintendent a balance sheet and profit and loss statement for such completed fiscal year, certified by two of its directors and reported on by its auditor, and such other financial statements as the Superintendent may require.

(3) **Market value of securities.**—The market value of all securities at the date of the statement shall be noted on the balance sheet.

(4) **Auditor.**—The auditor of an issuer registered under this Act shall be a person or firm acceptable to the Superintendent.

17. (1) Inspection.—The Superintendent may at any time make or cause to be made an inspection of the books, documents and records of any issuer and of any salesperson.

(2) **Access on inspection.**—Upon any such inspection, the Superintendent or his or her duly authorized representative is entitled to free access to all books of account, cash, securities, documents, bank accounts, vouchers, correspondence and records of every description of the issuer or salesperson, and no person shall withhold or destroy, conceal or refuse to furnish any information or thing reasonably required by the Superintendent for the purposes of the inspection.

18. Advertising and forms.—The Superintendent may at any time require any issuer or salesperson to submit for review any circulars, pamphlets, brochures, specimen contracts, application forms or other documents used by such issuer or salesperson in connection with the sale of investment contracts.

19. (1) Notice of changes by issuer.—Every registered issuer shall notify the Superintendent in writing of,

- (a) any change in its address for service;
- (b) any change in its executive officers; and
- (c) the commencement and termination of the employment, appointment or authorization of each of its salespersons.

(2) **by salesperson.**—Every salesperson registered under this Act shall notify the Superintendent in writing of,

- (a) any change in his or her address for service; and
- (b) every commencement and termination of his or her employment, appointment or authorization by a registered issuer.

20. (1) Valuation of assets.—In any statement or balance sheet to be filed with the Superintendent under this Act, an issuer may value its assets as,

- (a) cash — in the amount thereof in lawful money of Canada;
- (b) first mortgages — in the amount of the balance of the principal sum secured thereby together with all unpaid interest accrued thereon;
- (c) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest that are not in default as to principal or interest and that in the opinion of the Superintendent are amply secured,
 - (i) if purchased at par, at the par value,
 - (ii) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made,

but at the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase;

- (d) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest that are in default as to principal or interest or that in the opinion of the Superintendent are not amply secured — at the market value at the date of the statement;
- (e) stocks — at the book value not in excess of the cost to the issuer and in the aggregate not in excess of the aggregate market value at the date of the statement; and
- (f) other securities — at the book value but not in excess of the aggregate market value at the date of the statement.

(2) Idem.—Where any assets consist of securities whose market values are unduly depressed and in respect of which companies registered under the *Canadian and British Insurance Companies Act* (Canada) have been authorized to use values in excess of such market values, such assets may, with the approval of the Superintendent, be valued as authorized under that Act, but, if it appears to the Superintendent that the amount secured by mortgage on any parcel of real estate together with interest due and accrued thereon is greater than the value of such parcel or that such parcel is not sufficient for the loan and interest, the Superintendent may procure an appraisalment thereof, and, if from the appraised value it appears that such parcel of real estate is not adequate security for the loan and interest, such loan or mortgage shall be valued at an amount not to exceed the appraised value.

21. Extension of time prescribed.—The Superintendent may extend the time for the filing of any statement, balance sheet or other document, or the making of any application for renewal of registration under this Act.

22. Exempted sales.—Nothing in this Act prevents the sale of an investment contract by or on behalf of the holder thereof where such sale is not made in the course of

continued and successive transactions of like character or by a person whose usual business is the issuance or sale of investment contracts.

23. (1) Offences.—Every person who contravenes subsection 2(1) or subsection 3(1) or clause 3(2)(a) or (b), is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

(2) **Idem.**—Every person who contravenes clause 3(2)(c) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

(3) **Idem.**—Every person who contravenes any other provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$500.

24. Recovery of penalties.—No proceedings to recover the penalties provided in section 23 shall be instituted except,

- (a) with the written consent of the Attorney General; and
- (b) within two years after the offence is committed.

25. Regulations.—The Lieutenant Governor in Council may make regulations,

- (a) prescribing the fees payable upon applications for registration and renewal of registration;
- (b) prescribing forms and providing for their use;
- (c) designating investments or securities as qualified assets within the meaning of this Act;
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

26. Contract not a security.—Despite the *Securities Act*,

- (a) an investment contract shall be deemed not to be a security; and
- (b) an issuer shall be deemed not to be an investment company,

within the meaning of that Act.

REGULATION 679

REGISTRATION

R.R.O. 1990, Reg. 679

Application for Registration

1. (1) An application for registration as an issuer shall be in Form 1.
- (2) An application for registration as a salesman shall be in Form 2.
- (3) An application for renewal of registration as an issuer shall be in Form 3.
- (4) An application for renewal of registration as a salesman shall be in Form 4.

Fees

2. The following fees shall be paid to the Superintendent:

1. For registration or renewal thereof as an issuer, where the value of the assets of the issuer at the close of its last completed fiscal year immediately preceding the date of the application for registration or renewal was,
 - i. under \$500,000 \$ 400
 - ii. \$500,000 or over but under \$1,000,000 500
 - iii. \$1,000,000 or over but under \$5,000,000 600
 - iv. \$5,000,000 or over but under \$10,000,000 800
 - v. \$10,000,000 or over but under \$20,000,000 900
 - vi. \$20,000,000 or over 1,000
2. For registration or renewal thereof as a salesperson 75

FORM 1

Investment Contracts Act

APPLICATION FOR REGISTRATION AS AN ISSUER

Date of Application, 19...

Application for registration under the *Investment Contracts Act* as an issuer is hereby made and the following statements of fact are made in respect thereto:

1. Name

Address of Head Office

2. State address for service in Ontario

3. Addresses of branch offices in Ontario

4. (a) Authorized capital stock of the applicant is \$

(b) Capital stock subscribed \$

(c) Capital stock paid in, in cash \$

5. Is the applicant authorized to sell investment contracts outside Ontario? (Give particulars.)

Dated at

this

day of

19....

(official signature of applicant)

(signature of official and office held)

(signature of official and office held)

FORM 2

Investment Contracts Act

APPLICATION FOR REGISTRATION
AS A SALESPERSON

Date of application, 19....

I,, hereby make.
(print name)

application for registration under the *Investment Contracts Act* as a salesperson for

.....

and the following statements of fact are made in respect thereto:

1. (a) During the year immediately preceding the date of this application, I have resided at the following places:
.....
.....

(b) My present business address

(c) My address for service in Ontario
2. State country of birth

3. State nationality

4. The particulars of my occupation during the past five years are as follows:

Name and address of employer	Nature of business of employer	Nature of employ- ment	Period of employ- ment from: to:	Residence during employ- ment was

5.

Will you be engaged or employed in any business or occupation other than selling investment contracts? (Give particulars.)
6.

Have you ever been required to provide collateral security as a condition to obtaining a fidelity bond? (Give particulars.)
7.

Have you ever been charged, indicted or convicted under any law of any country or state or province thereof, regarding the sale of securities, or fraud or theft in connection therewith, or been named in any injunction in connection with proceedings taken on account of fraud arising out of any trade in any security, or are there any proceedings now pending that may lead to such charge, indictment, conviction or injunction? (Give particulars.)
8.

Have you ever been charged, indicted or convicted under any other law of any country or state or province thereof, or are there any proceedings now pending that may lead to any charge, indictment or injunction? (Give particulars.)
9.

Has any judgment been rendered against you in any civil court for damages arising from fraud? (Give particulars.)

10. Have you ever been discharged by an employer for any cause involving any criminal offence or fraud? (Give particulars.)

.....
.....

11. (a) Have you ever been licensed or registered as a salesperson of investment contracts, a security salesperson or as an insurance agent in any country, province or state? (Give particulars.)

(b) Have you ever been refused a licence or registration in any country, province or state? (Give particulars.)

.....
.....

(c) Has any licence held by you been suspended or cancelled? (Give particulars.)

.....
.....

12. Have you ever used, operated under or carried on business under any name other than your name hereto subscribed as applicant? (Give particulars.)

.....
.....

13. The following is a detailed description of the applicant:

Age Height Weight

Build Complexion Colour of Hair

Colour of eyes Moustache Male or Female

Nationality Married, Single

Country of birth Distinguishing marks

Dated at	(signature of applicant)
this day of		
19....		

CERTIFICATE OF REGISTERED ISSUER

To the Superintendent of Insurance:

I certify that
(name of applicant for registration)

is employed, appointed or authorized to sell investment contracts issued by this corporation. The information submitted by the applicant in the foregoing application is, to the best of my information, true and correct, and I request that the application be granted.

.....
(registered issuer)

by
.....

(title of official signing)

(address of employer)

FORM 3

*Investment Contracts Act*APPLICATION FOR RENEWAL
OF REGISTRATION AS AN ISSUER

Date of application , 19....

Application for renewal of registration under the *Investment Contracts Act* as an issuer is hereby made and the following statements of fact are made in respect thereto:

1. Name
- Address of Head Office
2. Address for service in Ontario
-
3. Addresses of branch offices in Ontario
-
4. State value of the assets of the applicant at the close of the last completed fiscal year
5. Is issuer authorized to sell investment contracts outside Ontario? (Give particulars.)
-
-

Dated at
this	(official signature of applicant)
day of	(signature of official and office held)
19....	(signature of official and office held)

FORM 4

*Investment Contracts Act*APPLICATION FOR RENEWAL
OF REGISTRATION AS A SALESPERSON

Date of Application , 19....

The undersigned hereby applies under the *Investment Contracts Act* for a renewal of registration as a salesperson for
(registered issuer)

and the following statements of fact are made in support thereof:

- 1. My present business address
- 2. My address for service in Ontario
- 3. Statement of any change in the facts as set out in my application for registration as a salesperson:
.....
.....

Dated at,	(signature of applicant)
this		
day of,		
19...		

CERTIFICATE OF REGISTERED ISSUER

To the Superintendent of Insurance:

I certify that
(name of applicant for registration)

is employed, appointed or authorized to sell investment contracts issued by this corporation. The information submitted by the applicant in the foregoing application is, to the best of my information, true and correct, and I request that the application be granted.

.....
(registered issuer)

by

.....
(title of official signing)

.....
(address of employer)

MOTOR VEHICLE ACCIDENT CLAIMS ACT

R.S.O. 1990, c. M.41, as am. S.O. 1993, c. 10, s. 54; S.O. 1993, c. 27, Sch.

1. Definitions.—In this Act,

“designated insurer”.—“designated insurer” means an insurer named as a designated insurer under subsection (3) and its estate;

“Director”.—“Director” means the Director of the Motor Vehicle Accident Claims Fund appointed for the purposes of this Act;

“driver’s licence”.—“driver’s licence” means a driver’s licence issued under the *Highway Traffic Act*;

“Fund”.—“Fund” means the Motor Vehicle Accident Claims Fund;

“insured motor vehicle”.—“insured motor vehicle” means a motor vehicle,

- (a) that is insured under a motor vehicle liability policy in accordance with the *Insurance Act*, or
- (b) in respect of which there is on deposit with the Registrar money, securities or a bond in an amount equal to the minimum limit of liability prescribed under section 251 of the *Insurance Act*, or
- (c) in respect of which the owner is exempt from the payment of registration fees under the regulations made under the *Highway Traffic Act*, or
- (d) that is registered under the *Highway Traffic Act* in the name of a municipality;

“licence”.—“licence” means a driver’s licence issued under the *Highway Traffic Act*;

“Minister”.—“Minister” means the member of the Executive Council to whom the administration of this Act is assigned;

“Ministry”.—“Ministry” means the Ministry of the Minister;

“permit”.—“permit” means an owner’s permit issued under the *Highway Traffic Act*;

“Registrar”.—“Registrar” means the Registrar of Motor Vehicles;

“Superintendent”.—“Superintendent” means the Superintendent of Insurance;

“uninsured motor vehicle”.—“uninsured motor vehicle” means a motor vehicle that is not an insured motor vehicle.

(2) **Exception re: excluded driver**.—Even though a motor vehicle is insured under a motor vehicle liability policy, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that policy unless the excluded driver is a named insured under another motor vehicle liability policy.

(3) **Designated insurer**.—Where the Lieutenant Governor in Council is of the opinion that an insurer is not paying or is unable to pay, within a reasonable period of

time, claims made against the insurer or claims for which final judgments have been given, the Lieutenant Governor in Council may, by regulation, name the insurer as a designated insurer for the purposes of this Act.

2. (1) Fund continued.—The fund known in English as the Motor Vehicle Accident Claims Fund and in French as Fonds d'indemnisation des victimes d'accidents de véhicules automobiles is continued.

(2) Fee on issue or renewal of licence.—Upon the issue or renewal of a driver's licence, there shall be paid to the Fund by the person to whom the licence or renewal is issued such fee as may be prescribed by the Lieutenant Governor in Council.

(3) Fund may be subsidized.—The Lieutenant Governor in Council, having regard to the condition of the Fund and the amount paid out of the Fund during any period, may direct payment out of the Consolidated Revenue Fund of such an amount as may be considered necessary or advisable to subsidize the Fund.

(4) Interest credited to Fund.—Interest shall be credited to the Fund out of the Consolidated Revenue Fund at a rate to be determined by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year upon the balance in the Fund at the end of the previous calendar year.

(5) Administration expenses.—The Lieutenant Governor in Council in each year shall authorize the payment out of the Fund to the Consolidated Revenue Fund of an amount for the payment of expenses in connection with the administration of the Fund.

3. Superintendent deemed agent for service re uninsured vehicles.—The Superintendent shall be deemed to be an agent of the owner and of the operator of every uninsured motor vehicle for service of notice or process in an action in Ontario arising out of the use or operation in Ontario of the uninsured motor vehicle, and, where such an action is commenced,

- (a) a notice or process shall be served on the Superintendent by leaving a copy thereof with or at the office of the Superintendent; and
- (b) a copy of the notice or process shall be sent forthwith by the Director by registered mail to the defendant at the defendant's last address as recorded with the Ministry of Transportation.

4. (1) Application for payment out of Fund where person has cause of action.—Where the death of or personal injury to or loss of or damage to property of any person is occasioned in Ontario by an uninsured motor vehicle, any person who would have a cause of action against the owner or driver of such uninsured motor vehicle in respect of such death, personal injury, loss or property damage, except a person entitled to make an application under subsection 7(1), may make application, in a form prescribed by the Minister, for payment out of the Fund of the damages in respect of such death, personal injury, loss or property damage.

(2) Deductible.—In the case of loss or damage to property, only the amount by which the loss or damage exceeds \$100 shall be paid out of the Fund under this section.

(3) **Notice to owner and driver.**—Upon receipt of an application under subsection (1), the Minister shall, by registered mail, forward a notice of the application for payment out of the Fund to the owner and the driver of the uninsured motor vehicle against whom liability for the damages occasioned by the operation of the uninsured motor vehicle is alleged, to their last addresses as recorded with the Ministry of Transportation.

(4) **Payment out of Fund authorized.**—The Minister may, in respect of an application made under subsection (1), make payment out of the Fund, subject to section 23, of an amount that the Minister considers proper in all the circumstances if,

- (a) the applicant executes a release under seal of all claims arising out of the motor vehicle accident that occasioned the damages to be paid out of the Fund; and
- (b) subject to clause (c), the owner and driver of the uninsured motor vehicle, against whom liability for the damages occasioned by the operation of the motor vehicle is alleged, execute a consent to the payment of the sum for damages out of the Fund and also execute under seal an undertaking to repay to the Fund the amount to be paid from the Fund; or
- (c) the person to whom a notice is sent in accordance with subsection (3) does not reply within thirty days of the date upon which the notice was sent either,
 - (i) by mail, or
 - (ii) by attending in person at the place named in the notice.

and disputes liability to the person making application under subsection (1).

(5) **Rights of insured to which insurer subrogated.**—The release executed under clause (4)(a) does not affect the rights of recovery of an insured against any person to which an insurer becomes subrogated under section 244 of the *Insurance Act*.

(6) **Minister subrogated to rights of applicant.**—Where an amount is paid out of the Fund under subsection (4), the Minister is subrogated to the rights of the person to whom such amount is paid and the Minister may maintain an action in the Minister's name or in the name of such person against any other person or persons responsible for the use or operation of the uninsured motor vehicle.

(7) **Suspension of licence.**—Where payment is made under subsection (4), the driver's licence of the person to whom notice was forwarded under subsection (3) shall be forthwith suspended by the Registrar and shall not be reinsured and no further licence or renewal shall be issued until such person has,

- (a) repaid in full to the Fund the amount paid out; or
- (b) commenced instalment repayments in accordance with an undertaking referred to in clause (4)(b) or the regulations made under section 11.

(8) **Suspension on default of payment.**—Where a person who has commenced repayment of the amount paid out of the Fund on the undertaking referred to in clause (4)(b) or by the payment of instalments in accordance with the regulations under section 11 is in default in any payment for a period of ten days, the Registrar upon receiving

notice of such default from the Director shall forthwith suspend the driver's licence of such person.

(9) **Settlement of debt.**—Despite subsections (7) and (8), the Registrar shall reinstate a driver's licence that has been suspended if the Driver notifies the Registrar that the Minister has entered into a settlement in respect of the amount owing to the Fund. S.O. 1993, c. 10, s. 54(1).

5. (1) **Application in respect of designated insurer.**—Where the death of or personal injury to or loss of or damage to property of any person is occasioned in Ontario by a motor vehicle insured under a motor vehicle liability policy issued by a designated insurer, any person who would have a cause of action against the owner or driver of such motor vehicle in respect of such death, personal injury, loss or property damage, except a person entitled to make an application under subsection 7(1), may make application, in a form prescribed by the Minister, for payment out of the Fund of the damages in respect of such death, personal injury, loss or property damage.

(2) **Deductible.**—In the case of loss or damage to property, only the amount by which the loss or damage exceeds \$100 shall be paid out of the Fund under this section.

(3) **Payment out of Fund authorized.**—The Minister may, in respect of an application made under subsection (1), make payment out of the Fund of an amount that the Minister considers proper in all the circumstances if,

- (a) the receiver or liquidator of the designated insurer irrevocably agrees to the validity and amount of the claim; and
- (b) the applicant executes a release and direction for payment in a form prescribed by the Minister to permit the Minister to claim from the designated insurer the amount paid to the applicant.

6. (1) **Statutory Accident benefits.**—Any person who has recourse against the Fund for statutory accident benefits under section 268 of the *Insurance Act* may make application, in a form prescribed by the Minister, for payment out of the Fund of the benefits.

(2) **Idem.**—If a person has recourse against the Fund under section 268 of the *Insurance Act*,

- (a) a reference to an insurer in the *Statutory Accident Benefits Schedule* shall be deemed to be a reference to the Fund and a reference to an insured person shall be deemed to be a reference to the person who has recourse against the Fund; and
- (b) sections 272, 274 and 279 to 287 of the *Insurance Act* apply with necessary modifications.

(3) **Idem.**—The Minister shall make payment out of the Fund of the amounts owing to a person described in subsection (2).

(4) **Idem.**—Subsection 23(6) does not apply to payments under this section. S.O. 1993, c. 10, ss. 1, 54(2); S.O. 1993, c. 27, Sch.

7. (1) Application for payment of judgment.—Subject to section 8, where a person recovers in any court in Ontario a judgment for damages on account of injury to or the death of any person or loss of or damage to property occasioned in Ontario by a motor vehicle owned or operated by the judgment debtor within Ontario, upon the determination of the proceedings, including any appeals, the person may apply, in the form prescribed by the Lieutenant Governor in Council, for and the Minister shall pay the amount of the judgment or of the unsatisfied portion thereof out of the Fund, provided that, in respect of a judgment for loss of or damage to property, only that amount by which the judgment exceeds \$100 is payable out of the Fund.

(2) Where Minister objects to payment.—Where an application is made to the Minister under subsection (1), the Minister at any time within thirty days of the receipt of the application or within such further time as may be allowed upon application to a judge of the Ontario Court (General Division) give written notice to the applicant of any objection to payment of the judgment or part of the judgment, and, where the Minister gives the notice, the applicant may apply to a judge of the Court for a finding or determination in respect of any matter in connection with the application for payment out of the Fund. S.O. 1993, c. 27.

(3) Action against all persons reasonably liable to be sued.—The Minister shall not pay out of the Fund any amount in respect of a judgment unless the judgment was given in an action brought against all persons against whom the applicant might reasonably be considered as having a cause of action in respect of the damages in question and prosecuted against every such person to judgment or dismissal. S.O. 1993, c. 27, Sch.

8. (1) Application of s. 7.—Section 7 does not apply in the case of a judgment that has been signed in an action in which,

(a) **Struck out.**

(b) the defendant did not file a statement of defence; or

(c) the defendant did not appear in person or by counsel at the trial; or

(d) the defendant did not appear in person at an examination for discovery; or

(e) judgment was signed upon the consent or with the agreement of the defendant,

unless the Minister has been given notice of such failure, consent or agreement and has been afforded an opportunity to take such action as he or she may consider advisable under subsection (2).

(2) Rights of Minister.—Within thirty days after receiving notice under subsection (1), the Minister may file a defence, make payment into court, appear by counsel at the trial or take such other action as he or she considers appropriate on behalf and in the name of the defendant, and may thereupon, on behalf and in the name of the defendant, conduct the defence, and may, where he or she considers it advisable to do so, consent to judgment in such amount as he or she may consider proper in all the circumstances, and all acts done in accordance therewith shall be deemed to be the acts of such defendant.

(3) Notice of Default set aside.—Where the Minister or defendant is noted in default, the Minister may give notice to the local registrar or clerk of the court, as the

case may be, that he or she intends to defend the action on behalf of and in the name of the defendant, and may require the noting of default to be set aside.

(4) **Minor defendant.**—The Minister, without the appointment of a litigation guardian, may exercise the rights and take the action referred to in subsection (2) and assert a counterclaim on behalf of a defendant who is a minor.

(5) **Deceased defendant.**—Where a deceased person, if living, would be the defendant or the defendant in the action dies and the personal representative, if any, of the deceased person does not defend the action and no litigation administrator is appointed, the Minister may exercise the rights and take the action referred to in subsection (2) in the name of the deceased and may assert a counterclaim on behalf of the estate of the deceased.

9. (1) Assignment of judgment to Minister.—The Minister shall not pay out of the Fund any sum under section 7 until the judgment creditor assigns the judgment to the Minister and the assignment shall be absolute in its form and effect even though the amount paid out of the Fund is less than the amount of the judgment.

(2) **Lodging assignment with court.**—Upon lodging a copy of the assignment of judgment, certified by the Director to be a true copy, with the local registrar or clerk of the court in which judgment was obtained, the Minister shall, to the extent of the amount of the assignment, be deemed to be the judgment creditor.

(3) **Lodging with sheriff.**—Where execution is issued in the name of the judgment creditor and a copy of the assignment of judgment, certified as prescribed in subsection (2), is lodged with the sheriff having the writ of execution, the provisions of subsection (2) apply with necessary modifications.

(4) **Non-application of subs. (2, 3).**—Subsections (2) and (3) do not apply where the judgment debtor was insured under a motor vehicle liability policy issued by a designated insurer at the time of the accident that gave rise to the judgment.

10. (1) Suspension of licence.—Where the Minister pays out of the Fund any amount in satisfaction of a judgment, the driver's licence of the judgment debtor on whose behalf such payment is made shall forthwith be suspended by the Registrar and shall not be reinstated and no further licence or renewal shall be issued until the judgment debtor has,

- (a) repaid in full to the Fund the amount paid out; or
- (b) commenced instalment repayments in accordance with the regulations made under section 11.

(2) **Non-application of subs. (1).**—Subsection (1) does not apply to a judgment debtor who was insured under a motor vehicle liability policy issued by a designated insurer at the time of the accident that gave rise to the judgment.

(3) **Settlement of debt.**—Despite subsection (1), the Registrar shall reinstate a driver's licence that has been suspended if the Director notifies the Registrar that the Minister has entered into a settlement in respect of the amount owing to the Fund. S.O. 1993, c. 10, s. 54(3).

11. (1) Restoration of licence on instalment payments.—The Lieutenant Governor in Council may make regulations providing for the restoration of the drivers' licences and owners' permits of persons indebted to the Fund who are making repayment to the Fund in instalments.

(2) Instalment payments and conditions of restoration of licence.—The regulations shall prescribe the classes of cases to which they apply, and shall provide for the manner of determining the amount of the instalment payments, the time and place of payment and the terms and conditions, including proof of financial responsibility, of the restoration of the licences and permits.

(3) Further suspension.—When a person is in default of any such payment for a period of ten days, the Registrar upon receiving notice of such default from the Director shall forthwith suspend the driver's licence and owner's permit or permits of such person.

11.1 Settlement of amounts owing to Fund.—The Minister may negotiate and enter into a settlement in respect of an amount owing to the Fund. S.O. 1993, c. 10, s. 54(4).

12. Where identity of vehicle cannot be established.—Where the death of or personal injury to any person is occasioned in Ontario by a motor vehicle but the identity of the motor vehicle and of the driver and owner thereof cannot be established, any person who would have a cause of action against the owner or driver in respect of such death or personal injury may bring an action against the Superintendent, either alone or as a co-defendant with others alleged to be responsible for the death or personal injury.

13. Adding Superintendent as party.—Where an action has been commenced in respect of the death of or injury to any person occasioned in Ontario by a motor vehicle and it is alleged that the death or injury was caused or contributed to by another motor vehicle, the identity of which and the owner and driver thereof cannot be established, the Superintendent may be added as a defendant on the motion of any party and shall be added as a defendant on his or her own motion.

14. Non-jury action.—When the Superintendent is a party to an action, the action shall be tried by a judge without a jury.

15. Where owner known but identity of driver cannot be established.—When the death of or personal injury to any person is occasioned in Ontario by a motor vehicle at a time when the motor vehicle was without the owner's consent in the possession of some person other than the owner or the owner's chauffeur and the identity of the person in possession of the motor vehicle cannot be established, any person who would have a cause of action against the person in possession of the motor vehicle in respect of such death or injury may bring an action against the Superintendent.

16. General denial.—In an action against the Superintendent, the Superintendent may deny generally the allegations in respect of the unidentified motor vehicle and unidentified owner and driver thereof and shall not be required to set forth the facts upon which he or she relies.

17. All reasonable efforts to ascertain identity condition to granting judgment.—In an action against the Superintendent, a judgment against the Superintendent

shall not be granted unless the court in which the action is brought is satisfied that all reasonable efforts have been made by the parties, other than the Superintendent, to ascertain the identity of the motor vehicle and of the owner and driver thereof, and that,

- (a) in the case of actions under section 12, the identity of the motor vehicle and of the owner and driver thereof cannot be established; or
- (b) in the case of actions under section 15, the identity of the driver of the motor vehicle that caused the death or injury cannot be established.

18. Time limit for actions against Superintendent.—All actions against the Superintendent may be commenced only within the times limited for actions under section 206 of the *Highway Traffic Act*.

19. Payment of judgment against Superintendent.—Where judgment is obtained against the Superintendent, upon the determination of the proceedings, including any appeals, the Minister, subject to subsection 23(4), shall pay out of the Fund to the plaintiff in the action the amount of the judgment. S.O. 1993, c. 27, Sch.

20. (1) Order of judge as to owner or driver.—Where judgment has been obtained against the Superintendent, the Superintendent may at any time thereafter, apply to a judge of the Ontario Court (General Division) for an order declaring that any person was, at the time of the accident, the owner or driver of the motor vehicle that occasioned the death or injury in respect of which the judgment was obtained. S.O. 1993, c. 27, Sch.

(2) Owner or driver defendant in action.—Upon the making of an order declaring that any person was the owner or driver of a motor vehicle,

- (a) such person shall for the purpose of this Act be deemed to be the defendant in the action in which judgment was given against the Superintendent, and the judgment against the Superintendent shall be deemed to be a judgment against such person; and
- (b) the Minister shall be deemed to have a judgment against such person for the amount of all money paid out of the Fund in respect of the judgment and accordingly has all the rights of a judgment creditor, including the right to recover any money that would have been payable in respect of the death or injury under any policy of insurance that was in force at the time of the accident.

21. Superintendent not personally liable.—In an action brought against the Superintendent, the Superintendent is not personally liable to satisfy a judgment obtained in the action.

22. (1) Payments in relation to amounts payable by insurer, etc., prohibited.—No payment shall be made out of the Fund in respect of a claim or judgment for damages or in respect of a judgment against the Superintendent of an amount paid or payable by an insurer by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*, other than a policy of life insurance, and no amount sought to be paid out of the Fund shall be sought in lieu of making a claim or receiving a payment that is payable by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*, other than a policy of life insurance.

(2) **Claims and judgments against persons insured by designated insurers.**—Despite subsection (1), payments may be made out of the Fund in respect of a claim or judgment for damages where the claim or judgment is against a person who at the time of the accident that gave rise to the claim or judgment was insured under a motor vehicle liability policy issued by a designated insurer, but any amount paid in respect of the claim or judgment by the designated insurer shall be deducted from the amount payable out of the Fund.

(3) **No payments by insurers.**—Despite subsections (1) and (2), no amount shall be paid out of the Fund to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*.

23. (1) Limits payable from Fund.—In respect of any application under section 4 or 7 for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of March, 1981, and subject to subsection (4), the Minister shall not pay out of the Fund more than the total amount of \$200,000, exclusive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one uninsured motor vehicle and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$10,000, but in any event the Minister shall not pay out of the Fund more than a total of \$10,000 in respect of all claims arising out of the loss of or damage to property occasioned by any one uninsured vehicle and arising out of any one accident.

(2) **Idem.**—In respect of any application under section 4 or 7 for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of January, 1977, and before the 1st day of March, 1981, and subject to subsection (4), the Minister shall not pay out of the Fund more than the total amount of \$100,000, exclusive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one uninsured motor vehicle and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$5,000, but in any event the Minister shall not pay out of the Fund more than a total of \$5,000 in respect of all claims arising out of the loss of or damage to property occasioned by any one uninsured vehicle and arising out of any one accident.

(3) **Idem.**—In respect of any application under section 4 or 7 for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of September, 1969, and before the 1st day of January, 1977, and subject to subsection (4), the Minister shall not pay out of the Fund more than the total amount of \$50,000, exclusive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one uninsured motor vehicle and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$5,000, but in any event the Minister shall not pay out of the Fund more than a total of \$5,000 in respect of all claims arising out of the loss of or

damage to property occasioned by any one uninsured vehicle and arising out of any one accident.

(4) **Idem.**—Subject to subsection (5), the Minister shall not pay out of the Fund in respect of judgments against the Superintendent for damages,

- (a) arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of March, 1981, more than \$200,000, exclusive of costs, for all damages on account of injury to one or more persons and the death of one or more persons occasioned by any one uninsured motor vehicle and arising out of any one accident; or
- (b) arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of January, 1977, and before the 1st day of January 1981, more than \$100,000, exclusive of costs, for all damages on account of injury to one or more persons and the death of one or more persons occasioned by any one uninsured motor vehicle and arising out of any one accident; or
- (c) arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of September, 1969, and before the 1st day of January, 1977, more than \$50,000, exclusive of costs, for all damages on account of injury to one or more persons and the death of one or more persons occasioned by any one uninsured motor vehicle and arising out of any one accident.

(5) **Partial discharge of judgment debt.**—Where any amount is recovered from any other source in partial discharge of the judgment debt, the maximum amount prescribed in this section shall be reduced by the amount so paid, and any amount paid out of the Fund in excess of the amount authorized by this section may be recovered by action brought by the Minister.

(6) **Interest.**—The Minister shall not pay out of the Fund any amount for interest on a judgment or interest on costs.

24. (1) Application.—This section applies only to payments out of the Fund made by reason of an insurer being named a designated insurer.

(2) **Limits payable in respect of designated insurer.**—Where a payment is made out of the Fund by reason of an insurer being named as a designated insurer, the limits payable out of the Fund shall be those prescribed by this section and not those prescribed by section 23.

(3) **Idem.**—In respect of any application for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of March, 1981, the Minister shall not pay out of the Fund more than the total amount of \$200,000, exclusive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one motor vehicle insured with a designated insurer and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$10,000.

(4) **Idem.**—In respect of any application for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of January, 1977,

and before the 1st day of March, 1981, the Minister shall not pay out of the Fund more than the total amount of \$100,000, exclusive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one motor vehicle insured with a designated insurer and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$5,000.

(5) **Idem.**—In respect of any application for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of September, 1969, and before the 1st day of January, 1977, the Minister shall not pay out of the Fund more than the total amount of \$50,000, exclusive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one motor vehicle insured with a designated insurer and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$5,000.

(6) **Additional payment.**—Where a payment has been made out of the Fund by reason of an insurer being named as a designated insurer and the amount of the judgment, excluding interest thereon, exceeds the limits of the Fund as determined under subsections (3) to (5), upon receiving the final payment by designated insurer, the Minister shall pay to the original judgment creditor an additional amount determined in accordance with the following formula:

$$A = (J - F) \times \frac{R}{J}$$

where,

A = The amount to be paid to the original judgment creditor under this subsection.

F = The amount paid out of the Fund.

J = The lesser of,

- (a) the amount of the judgment, excluding interest thereon and costs therein; or
- (b) the liability limit of the motor vehicle liability policy issued by the designated insurer.

R = The total amount recovered from the designated insurer with respect to the judgment by the Minister.

(7) **Partial discharge of judgment debt.**—Where any amount is recovered from any other source in partial discharge of the judgment debt, the maximum amount prescribed in this section shall be reduced by the amount so paid, and any amount paid out of the Fund in excess of the amount authorized by this section may be recovered by action brought by the Minister.

(8) **Interest.**—The Minister shall not pay out of the Fund any amount for interest on a judgment or interest on costs.

25. (1) Interpretation.—In this section, “residence” shall be determined as of the date of the motor vehicle accident as a result of which the damages are claimed.

(2) **Payments to non-residents.**—The Minister shall not pay out of the Fund any amount in favour of a person who ordinarily resides outside of Ontario unless such person resides in a jurisdiction in which recourse of a substantially similar character to that provided by this Act is afforded to residents of Ontario, and no payment shall include an amount that would not be payable by the law of the jurisdiction in which such person resides.

26. (1) Costs.—The Minister shall pay out of the Fund costs of an action but not more than the actual disbursements and fees as awarded in the judgment as between the parties to the action.

(2) **Idem.**—Where, by reason of an action having been maintained in part by an insurer, an application under this section is for payment out of the Fund of only part of the amount of the judgment obtained in the action, the Minister shall not pay out of the Fund more than that part of the costs of the action as awarded in the judgment as between parties to the action that bears the same proportion to the whole of such costs as the total amount of the judgment, less the amount of the insurer's interest in the judgment, bears to the total amount of the judgment.

(3) **Solicitor's fee.**—Where a solicitor has completed the application referred to in subsection 7(1) and the assignment of judgment and has issued execution and filed it with the sheriff, the solicitor is entitled to a fee of \$30 out of the Fund, and such fee includes disbursements.

(4) **Direction of Minister for payment of solicitor's fee.**—If the Minister is satisfied that it is not feasible to issue and file execution as required under subsection (3), the Minister may waive such requirements, and in such case the solicitor is entitled to the fee under subsection (3).

27. (1) Bill of costs to be taxed and filed.—No money shall be paid out of the Fund under or in respect of an order or judgment until the bill or bills of costs of the barrister or solicitor acting or who acted for the applicant in the application or action that resulted in the order or judgment, as assessed on a solicitor and client basis, is filed with the Minister.

(2) **Fees limited to taxed costs.**—No amount shall be charged or received either directly or indirectly for legal services in connection with any application or action referred to in subsection (1), other than the amounts as assessed on a solicitor and client basis in the bill or bills of costs.

(3) **No order required.**—No order is required to assess such a bill.

REGULATION 799
DESIGNATED INSURERS

R.R.O. 1990, Reg. 799

1. (1) The following are named as designated insurers for the purposes of the Act:
1. Pitts Insurance Company.
 2. Cardinal Insurance Company.
 3. Northumberland General Insurance Company — Northumberland, compagnie générale d'assurances.
 4. United Canada Insurance Company — Canada uni compagnie d'assurance.

REGULATION 800

GENERAL

R.R.O. 1990, Reg. 800, as am. O. Reg. 152/94

Fees and Forms

1. The fee payable by a person under subsection 2(2) of the Act is five cents for each six-month period or part of a six-month period during which the licence is valid. O. Reg. 152/94.

2. The application referred to in subsection 7(1) of the Act shall be in Form 1.

3. (1) A person indebted to the Fund who is making repayment to the Fund in instalments may apply for the restoration of the person's driver's licence.

(2) An application for the restoration of a person's driver's licence shall be in Form 2 and shall be filed with the Director.

(3) A person filing an application under subsection (2) who owns a motor vehicle shall file with the application,

(a) a certificate of insurance for the motor vehicle; and

(b) an undertaking and authorization in Form 3.

(4) A person filing an application under subsection (2) who does not own a motor vehicle shall file with the application an undertaking and authorization in Form 4.

(5) In subsections (3) and (4), "certificate of insurance" means a certificate issued under a motor vehicle liability policy issued by an insurer licensed under the *Insurance Act*.

Instalment Payments

4. (1) The amount of monthly instalment payments by an applicant for the restoration of a driver's licence shall be agreed upon by the applicant and the Director.

(2) Subject to subsection (3), the minimum amount of monthly instalment payments shall be 10 per cent of an applicant's gross monthly earnings.

(3) If the Director considers that the monthly instalment payments required by subsection (2) would cause an applicant undue hardship, the Director may permit the applicant to make payments that are less than those required by subsection (2).

5. It is a condition for the restoration of a licence that where the income or financial worth of an indebted person significantly changes, the indebted person, when so required by the Director, shall submit a new proposal that, with such amendment as the Director may make, shall be substituted for the previous proposal and payments under the new proposal shall be the instalment payments referred to in section 11 of the Act.

6. Every instalment payment shall be made in cash or by certified cheque, bank draft or money order payable to the Treasurer of Ontario and shall be received by the Director not later than the tenth day after the date on which the Director requests removal of suspension of the driver's licence of the person indebted to the Fund and on that day of each subsequent month until the total indebtedness owing to the Fund is discharged.

FORM 1

Motor Vehicle Accident Claims Act

MINISTRY OF CONSUMER AND
COMMERCIAL RELATIONS
THE MOTOR VEHICLE
ACCIDENT CLAIMS FUND

IN THE MATTER OF an application for payment under section 7 of the *Motor Vehicle Accident Claims Act*

.....
(Court)

BETWEEN:

..... Plaintiff(s)

—and—

..... Defendant(s)

I (We)

of
(address)

in the
(city, town, village, postal address)

in the
(province, state)

(make oath) (affirm) and say:

1. I (We) am (are)
the judgment creditor(s) in the said proceeding.

2. I (We) was (were) awarded judgment in the said proceeding by
.....
(name of judge)

at
(place of judgment)

on and I (we) was (were)
(date)

awarded the sum of \$
apportioned as follows: (set out amount awarded to each judgment creditor)

..... \$
..... \$

..... \$
 \$
 and costs which have been assessed (fixed by the trial judge) at \$

3. The said judgment has become final by expiry without appeal within the time allowed for appeal (or by affirmation on appeal).

4. The said proceeding was brought against all persons against whom I (we) might reasonably be considered as having a cause of action in respect of the damages in question and was prosecuted against every such person to judgment or dismissal.

5. The accident in respect of which the proceeding is brought occurred

.....
 (describe location)

on the day of, 19....
 at approximately o'clock m

6. On the date on which the motor vehicle accident in question occurred I (we)
 was (were) resident in the Province (State) of and
 was (were) resident in such Province (State) for
 (period of residency)

7. There are no other claims in respect of the accident in question.

.....
 (give particulars of other claims if any)

8.—(1) The action was defended by
 (state lawyer's name
 or as the case may be) acting for the defendant(s) and there was no default at any stage of the action.

OR

(2) Because of default on the part of the defendant(s)
 in notice
 (state nature of default)

was given the Minister of Consumer and Commercial Relations under section 8 of the *Motor Vehicle Accident Claims Act*.

9.—(1) The proceeding proceeded to trial and the judgment is not the result of a consent, agreement or settlement.

OR

(2) The judgment was taken by consent of the defendant(s) after notice had been duly given to the Minister of Consumer and Commercial Relations who defended the action on behalf and in the name of the defendant(s).

OR

(3) The judgment was taken by consent of the Minister of Consumer and Commercial Relations who defended the action on behalf and in the name of the defendant(s)

under section 8 of the *Motor Vehicle Accident Claims Act*.

10. My (Our) application for payment out of the Fund is not made by or on behalf of an insurer in respect of any amount paid or payable by an insurer by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*, other than a policy of life insurance;

And no part of the amount sought to be paid out of the Fund is sought in lieu of making a claim or receiving a payment that is payable by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*, other than a policy of life insurance;

And no part of the amount so sought is sought for payment to an insurer in respect of any amount paid or payable by an insurer by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*, other than a policy of life insurance.

11. The following amount contained in the judgment was awarded in respect of damage to property (set out amount awarded to each judgment creditor)

.....
(name)	(amount)

12. I (We) have recovered the following amount in respect of the judgment
\$

13.—(1) I (We) was (were) paid or am (are) entitled to be paid a portion of the loss under a policy of insurance within the meaning of the *Insurance Act* (other than a policy of life insurance) in the amount of \$

(2) An insurer has (or insurers have) an interest in the judgment by reason of the following payments for:

1. Damage to automobile\$
2. Damage to other property\$
3. Medical expenses\$

(3) I (We) have apportioned the costs in accordance with subsection 26(2) of the Act in the amount of \$

14. I (We) am (are) satisfied that the said judgment debtor(s)
..... is (are)
not insured with a policy of insurance that would cover any part of the judgment.

15. I (We) have not been given notice nor have any actual notice of bankruptcy proceedings instituted by the judgment debtor(s).

OR

I (We) have been given notice or have any actual notice of bankruptcy proceedings instituted by the judgment debtor(s).

16. Annexed hereto and marked,

- (a) Exhibit A is the Original Judgment above referred to;
- (b) Exhibit B is the Certificate of the Assessment Officer with respect to costs as taxed pursuant to the said judgment;
- (c) Exhibit C is the Solicitor and Client Bill of Costs duly taxed and certified;
- (d) Exhibit D is a copy of the Statement of Claim filed in the said proceeding;
- (e) Exhibit E is the Assignment of Judgment.

17. To the best of my knowledge the following description of the defendant is reasonably accurate:

Full name

Residence

Business Address

Employer

Occupation

Approximate Age

18. To the best of my (our) knowledge the following description of the defendant's motor vehicle is reasonably accurate:

Make Year Model

Registered for year

Permit No.

19. This is my (our) application for payment out of The Motor Vehicle Accident Claims Fund for the following amounts:

Injury to or death of a person \$

Damage to property \$

Costs \$

Total \$

(SWORN) affirmed before me

at the of

in the of

this day of

19

A Commissioner, etc.

NOTE: ALL PLAINTIFFS TO ACTION MUST SIGN.

AMPLE SPACE HAS BEEN PROVIDED IN SEVERAL PLACES TO PERMIT THE FORM TO BE ADAPTED TO ANY SITUATION. BEFORE THE ADMINISTRATION OF THE OATH OR AFFIRMATION ALL UNUSED SPACES SHOULD BE SO RULED OR MARKED AS TO PREVENT ANY SUBSEQUENT INSERTION.

FORM 2

Motor Vehicle Accident Claims Act

APPLICATION FOR THE RESTORATION OF A DRIVER'S LICENCE

- 1. Last name
First name
Middle name(s)
- 2. Where do you live?
.....
What is your home telephone number?
- 3. Please list your address for the past three years:
.....
.....
.....
- 4. What was your driver's licence number?
.....
- 5. What is your date of birth?
- 6. What is your occupation?
- 7. Who is your employer?
.....
What is your employer's address and telephone number?
.....
.....
What is your supervisor's name?
- 8. How long have you worked for your current employer?
.....

9. How much do you earn before deductions?

(monthly) \$

(weekly) \$

Please attach a copy of your pay stub or a letter from your employer to verify your earnings.

10. Do you have income in addition to your earnings (for example, family allowance benefits or a pension)? If yes, please list each source of income and the amount you receive.

.....

11. Please describe your assets and their approximate value in the blanks below:

Assets:

Approximate value :

Your home

\$

Whose name is your home registered in?

.....

Vehicle(s):

\$

Year Make Model

.....

..... \$

Investments (please list):

\$

.....

.....

.....

Savings

\$

Other assets (please list):

\$

.....

.....

.....

TOTAL ASSETS

\$

12.

Please describe your monthly expenses in the blanks below:

Form 2

MOTOR VEHICLE ACCIDENT CLAIMS REGULATIONS

Type of expense:	Approximate amount:
Your mortgage or rent	\$
If you have a mortgage, who holds it and what is the balance outstanding?	\$
.....
.....
.....
Utilities	
Telephone	\$
Insurance	\$
Food	\$
Child care	\$
Credit card payments	\$
Loan payments (please list each of your loans, who gave you the loan and the balance owing):	\$
.....
.....
.....
Other expenses (please list):	\$
.....
.....	\$
TOTAL MONTHLY EXPENSES	\$

13. Do you own a motor vehicle?

☐ Yes ☐ No

If yes, what automobile insurance company issued your policy?

.....

Who is your insurance agent or broker?

.....

What is your policy number?

I certify that the information provided in this application is complete and correct.

..... Date Signature
---------------	--------------------

O. Reg. 529/89, s. 2.

FORM 3

Motor Vehicle Accident Claims Act

**UNDERTAKING AND AUTHORIZATION BY A PERSON
WHO OWNS A MOTOR VEHICLE**

I,, agree to make monthly payments of \$
(name of applicant)
payable to the Treasurer of Ontario and delivered to the Motor Vehicle Accident Claims Fund.

The payments will begin as of the day that the Fund requests that the Minister of Transportation lift the suspension of my driver's licence. I will continue to make these payments on the same day each month until I am no longer indebted to the Fund.

As long as I am indebted to the Fund, I will maintain a motor vehicle liability policy for every motor vehicle that I own. If I change the insurer of a motor vehicle, I will file with the Director of the Fund a certificate of insurance issued under the new motor vehicle liability policy for the vehicle.

I authorize the Director of the Fund to make such inquiries as the Director considers necessary to determine whether I am complying with this undertaking.

.....
Witness

.....
Signature

.....
Date

.....
Name and address of witness

FORM 4

Motor Vehicle Accident Claims Act

**UNDERTAKING AND AUTHORIZATION BY A PERSON
WHO DOES NOT OWN A MOTOR VEHICLE**

I,, agree to make monthly payments of \$
(name of applicant)
payable to the Treasurer of Ontario and delivered to the Motor Vehicle Accident Claims Fund.

The payments will begin as of the day that the Fund requests that the Minister of Transportation lift the suspension of my driver's licence. I will continue to make these payments on the same day each month until I am no longer indebted to the Fund.

If I become the owner of a motor vehicle while I am indebted to the Fund, I will immediately notify and file with the Director of the Fund a certificate of insurance for the vehicle.

As long as I am indebted to the Fund, I will maintain a motor vehicle liability policy for every motor vehicle that I own. If I change the insurer of a motor vehicle, I will file with the Director of the Fund a certificate of insurance issued under the new motor vehicle liability policy for the vehicle.

Form 4

MOTOR VEHICLE ACCIDENT CLAIMS REGULATIONS

I authorize the Director of the Fund to make such inquiries as the Director considers necessary to determine whether I am complying with this undertaking.

.....
Witness

.....
Signature

.....
Date

.....
Name and address of witness

REGISTERED INSURANCE BROKERS ACT

R.S.O. 1990, c. R.19,
as am. S.O. 1993, c. 27, Sch.

1. Definitions.—In this Act,

- “**applicant**”.—“applicant” means an individual, partnership or corporation that applies for registration under this Act;
- “**board of inquiry**”.—“board of inquiry” means a board of inquiry appointed by the Council;
- “**certificate**”.—“certificate” means a certificate issued under this Act;
- “**Commissioner**”.—“Commissioner” means the commissioner of insurance under the *Insurance Act*;
- “**Complaints Committee**”.—“Complaints Committee” means the Complaints Committee of the Council established under this Act;
- “**contract**”.—“contract” has the same meaning as in the *Insurance Act* but does not include a contract of life insurance as defined in that Act;
- “**Corporation**”.—“Corporation” means the body corporate known as the Registered Insurance Brokers of Ontario;
- “**Council**”.—“Council” means the Council of the Registered Insurance Brokers of Ontario;
- “**Discipline Committee**”.—“Discipline Committee” means the Discipline Committee of the Council established under this Act;
- “**incapacitated member**”.—“incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interest of the public or the member that he or she no longer be permitted to carry on business as a registered insurance broker or that his or her business be restricted;
- “**insurance**”.—“insurance” has the same meaning as in the *Insurance Act* but does not include life insurance as defined in that Act;
- “**insurance agent**”.—“insurance agent” means an agent within the meaning of the *Insurance Act*;
- “**insurance broker**”.—“insurance broker” means any person who for any compensation, commission or other thing of value, with respect to persons or property in Ontario, deals directly with the public and,
- (a) acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance or reinsurance whether or not the person has agreements with insurers allowing the person to bind coverage and countersign insurance documents on behalf of insurers,

- (b) provides risk management services including claims assistance where required,
- (c) provides consulting or advisory services with respect to insurance or reinsurance,
- (d) holds himself, herself or itself out as an insurance consultant or examines, appraises, reviews or evaluates any insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above;

“Manager”.—“Manager” means the Manager of the Registered Insurance Brokers of Ontario;

“member”.—“member” means an individual, partnership or corporation registered under this Act to carry on business as an insurance broker;

“Minister”.—“Minister” means the Minister of Financial Institutions;

“misconduct”.—“misconduct” means misconduct as defined in the regulations;

“person”.—“person” includes a partnership and an unincorporated association;

“public”.—“public” means persons other than insurers, insurance brokers, insurance adjusters and insurance agents;

“Qualification and Registration Committee”.—“Qualification and Registration Committee” means the Qualification and Registration Committee of the Council established under this Act;

“registered insurance broker”.—“registered insurance broker” means a person registered under this Act to carry on business as an insurance broker;

“Superintendent”.—“Superintendent” means the Superintendent of Insurance.

2. (1) Prohibition.—No person shall act as an insurance broker unless the person is a registered insurance broker under this Act.

(2) Exceptions.—Subsection (1) does not apply to,

- (a) lawyers, accountants or actuaries acting in their professional capacity;
- (b) an insurance agent licensed under the *Insurance Act*, while acting within the authority of his or her licence;
- (c) an insurance adjuster licensed under the *Insurance Act*, while acting within the authority of his or her licence;
- (d) any individual, partnership or corporation who acts solely as a reinsurance broker;
- (e) a person registered under the *Travel Industry Act*, acting in respect of travel accident and sickness, baggage or trip cancellation insurance;
- (f) an employee of a person registered under this Act when the employee is acting for or on behalf of his or her employer engaged solely in the performance of clerical or administrative duties in the office of his or her employer;

- (g) any regular salaried employee of an insured or of a subsidiary or affiliate or corporate insured whose duties in whole or in part are to negotiate for or procure insurance or render other services on behalf of such employer or employers in connection with the procuring or maintaining of insurance on the property or risks of such employer or employers if the employee does not receive compensation, commission or other thing of value from any insurance agent, broker, or insurer for, or in connection with such services;
- (h) a trustee appointed under this Act;
- (i) an insurer or a subsidiary or an affiliate of an insurer or any employee, officer or director thereof if he or she is not acting in any manner in soliciting, negotiating or procuring the making of any contract of insurance;
- (j) such other persons as are exempted by the regulations.

3. (1) **Prohibition.**—No person shall hold himself, herself or itself out as an insurance broker or as the holder of a certificate under this Act unless the person is the holder of a certificate under this Act.

(2) **Use of title.**—No person shall use the title “registered insurance broker” or “courtiers d’assurances inscrit” or the designation “R.I.B. (Ont.)” or “C.A.I. (Ont.)” or other designation representing or similar to the title unless the person is the holder of a certificate as a registered insurance broker under this Act.

4. (1) **Corporation continued.**—The Registered Insurance Brokers of Ontario is continued under the name Registered Insurance Brokers of Ontario in English and Courtiers d’assurances inscrits de l’Ontario in French, as a body corporate without share capital.

(2) **Powers.**—The Corporation has the power to acquire, hold, dispose of and otherwise deal with real and personal property for the purposes of this Act.

(3) **Objects.**—The Corporation shall have the general purpose of carrying out the powers and duties conferred on it by this Act.

5. (1) **Membership.**—Every person who is registered by the Corporation is a member of the Corporation.

(2) **Resignation of membership.**—An individual member may resign his or her membership by filing with the Manager a resignation in writing and the registration is thereupon cancelled subject to the continuing jurisdiction of the Corporation in respect of any disciplinary action arising out of his or her conduct while a member.

(3) **Cancellation for default of fees.**—The Manager may cancel a registration for non-payment of any prescribed fee after giving the member at least one month notice in writing of the default and intention to cancel the registration subject to the continuing jurisdiction of the Corporation.

6. (1) **Council.**—The Council shall be the governing body and board of directors of the Corporation and shall manage and administer its affairs.

(2) **Composition.**—Subject to the regulations, the Council shall be composed of,

- (a) eight persons who are individual members of the Corporation and are elected by the members in the manner provided by the regulations;
- (b) three persons who are not members of the Corporation and are appointed by the Lieutenant Governor in Council.

(3) **Increased size of Council.**—The Lieutenant Governor in Council may, by regulation, vary the size of the Council but at least one-quarter of the members of the Council shall be persons appointed by the Lieutenant Governor in Council who are not members of the Corporation.

(4) **Transition.**—Despite clause (2)(a), when this Act comes into force, the Lieutenant Governor in Council shall appoint to the Council the eight persons who are individual members of the Corporation for a term of three years, in the case of four of the appointees, and five years, in the case of four of the appointees.

(5) **Appointment.**—The appointment of every person appointed under clause (2)(b) shall be for a term not exceeding four years and a person whose appointment expires is eligible for one reappointment.

7. Qualifications to vote.—Every individual member who is,

- (a) registered under this Act; and
- (b) not in default of payment of any prescribed fee,

is qualified to vote at an election of members of the Council.

8. (1) President and Vice-President.—The Council shall elect annually a President and one or more Vice-Presidents from among its members.

(2) **Manager and officers.**—The Council shall appoint during pleasure a Manager and such other officers and servants as may from time to time be necessary or desirable in the opinion of the Council to perform the work of the Corporation.

(3) **Quorum.**—A majority of the members of the Council, including at least one member who is not a member of the Corporation, constitutes a quorum.

9. (1) Ontario Insurance Commission.—The Ontario Insurance Commission established under the *Insurance Act* shall be deemed to have an interest in the Corporation, as the representative of all persons who may be served by registered insurance brokers.

(2) **Information.**—The Corporation shall, within a reasonable time, furnish the Commissioner or the Superintendent, as the case may be, with such information and financial statements with respect to the Corporation as he or she may require.

10. (1) Annual report of Corporation.—The Corporation shall, within four months after the termination of each financial year, provide to its members and the Minister an annual report relating to its activities in that year including,

- (a) financial statements of the Corporation and the auditor's report thereon;
- (b) a summary of the complaints received against members, categorized by source, type and disposition of the complaint;

- (c) a summary of disciplinary proceedings undertaken against members, categorized by source, type and disposition of the proceedings;
- (d) a summary of the applications for registration and the disposition of the applications;
- (e) membership statistics of the Corporation, categorized by size and type of member;
- (f) an identification of matters of policy currently under review by the Council and of any proposed changes in policies or programs; and
- (g) any other information considered relevant by the Corporation or requested by the Minister.

(2) **Annual report of Superintendent.**—The Superintendent shall make an annual examination of the affairs of the Corporation and shall report concerning the examination to the Minister and the Minister shall then lay the annual report of the Corporation and the report of the Superintendent before the Assembly if it is in session and, if not, at the next session.

11. (1) By-laws.—The Council may pass by-laws relating to the administrative and domestic affairs of the Corporation not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing,

- (a) prescribing the seal of the Corporation;
- (b) providing for the execution of documents by the Corporation;
- (c) fixing the financial year of the Corporation and providing for the audit of the accounts and transactions of the Corporation;
- (d) providing procedures for the election of President, Vice-Presidents and other officers of the Corporation, the filling of a vacancy in those offices, and prescribing their duties;
- (e) respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
- (f) respecting the calling, holding and conducting of meetings of the membership of the Corporation;
- (g) prescribing the remuneration of the members of the Council and committees and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (h) providing for the appointment, composition, powers and duties of the committees of Council as may be required, including the filling of vacancies and the setting of quorums;
- (i) prescribing forms and providing for their use;
- (j) providing procedures for the making, amending and revoking of by-laws;

- (k) respecting management of the property of the Corporation;
 - (l) fixing and providing for the payment of annual fees and special assessments by members and fees for certificates and examinations;
 - (m) providing for the borrowing of money on the credit of the Corporation and the charging, mortgaging, hypothecating or pledging of any of the real or personal property of the Corporation to secure any money borrowed or other debt or any other obligation or liability of the Corporation;
 - (n) respecting the application of the funds of the Corporation and the investment and reinvestment of any of its funds not immediately required in any investments that are from time to time authorized investments for joint stock insurance companies and cash mutual insurance companies under the *Insurance Act*;
 - (o) providing for classes of membership and for the designation of and the terms and conditions attaching to each class;
 - (p) respecting the keeping of records by the Corporation, Council, committees and members;
 - (q) respecting the duties and authority of the Manager;
 - (r) respecting all other things that are considered necessary for the attainment of the objects of the Corporation and the efficient conduct of its affairs.
- (2) **Idem.**—A copy of the by-laws made under subsection (1) and amendments thereto,
- (a) shall be forwarded to the Superintendent; and
 - (b) shall be available for public inspection in the office of the Corporation.
- (3) **Signed by-laws and resolutions.**—Any by-law or resolution signed by all the members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for that purpose.
- 12. (1) Establishment of committees.**—The Council shall establish and appoint as hereinafter provided the following committees:
- (a) a Qualification and Registration Committee;
 - (b) one or more Complaints Committees;
 - (c) a Discipline Committee,

and may establish such other or additional committees as the Council from time to time considers necessary.

(2) **Panel of lay persons.**—The Lieutenant Governor in Council may appoint such number of persons as the Lieutenant Governor in Council considers appropriate who are not members of the Corporation or members of the Council to a panel of lay persons eligible to serve as members of a Complaints Committee and the Discipline Committee.

(3) **Term of appointment.**—The appointment of every person under subsection (2) shall be for a term not exceeding four years and a person whose appointment expires is eligible for one reappointment.

13. (1) Issuance of certificates of registration.—The Manager shall issue a certificate or renewal thereof to any applicant therefor who is qualified under this Act and the regulations and has passed such examinations as the Council may set or approve and the Manager shall refer to the Qualification and Registration Committee every application for a certificate or renewal thereof that he or she proposes to refuse.

(2) **Powers and duties of Qualification and Registration Committee.**—The Qualification and Registration Committee shall determine the eligibility of applicants for certificates or renewals thereof and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Qualification and Registration Committee fixes or to take such additional training as the Qualification and Registration Committee specifies.

(3) **Conditions of certificates.**—The Qualification and Registration Committee may direct the Manager to issue or refuse to issue certificates and renewals.

(4) **Review of qualifications.**—The Qualification and Registration Committee may review the qualifications of any member and may impose a limitation on the member's certificate pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

(5) **Registers.**—The Manager shall maintain one or more registers in which is entered every person to whom a certificate has been issued identifying the terms of the certificate or the registration and every revocation, suspension, cancellation and expiration or other termination and every renewal of the certificate and such other information as the Qualification and Registration Committee or Discipline Committee directs.

14. (1) Notice of proposal to refuse registration.—Where the Qualification and Registration Committee proposes to refuse to grant a certificate to an applicant, the Manager on behalf of the Committee shall serve notice of the proposal of the Committee together with written reasons therefor, on the applicant.

(2) **Exemptions.**—Subsection (1) does not apply to a refusal to grant a certificate to a person who was previously registered and whose registration was suspended or revoked as a result of a decision of the Discipline Committee.

(3) **Notice requiring hearing or review.**—A notice under subsection (1) shall inform the applicant that he, she or it is entitled to a hearing by the Qualification and Registration Committee if he, she or it mails or delivers within fifteen days after the notice under subsection (1) is served on the applicant, notice in writing to the Committee requiring a hearing.

(4) **Powers of Committee.**—Where an applicant does not require a hearing by the Committee in accordance with subsection (3), the Committee may refuse the application.

(5) **Finding of facts.**—The findings of fact of the Committee pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

(6) **Procedures on hearings.**—The provisions of subsections 19(2), (3), (4), (5), (7) and (8) apply with necessary modifications to proceedings before the Committee under this section.

(7) **Powers of Committee upon hearing or review.**—The Committee shall, after the hearing or review,

- (a) confirm the proposed decision;
- (b) require the applicant to take qualifying examinations or additional training as a condition for registration, or both, as specified by the Committee; or
- (c) direct the Manager to register the applicant on any appropriate register subject to such conditions as the Committee considers appropriate in cases where the Committee finds that the applicant meets the requirements for registration.

15. (1) Complaints Committee.—Each Complaints Committee shall be composed of such number of persons as the Council may determine but at least one member of the Committee shall be a person who is not a member of the Corporation and who is appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council.

(2) **Appointment.**—The Council may appoint any individual member of the Corporation to a Complaints Committee.

(3) **Membership in other committees.**—No person who is a member of the Discipline Committee shall be a member of a Complaints Committee.

(4) **Chair.**—The Council shall name one member of each Complaints Committee to be chair of that Committee.

(5) **Quorum.**—A majority of the members of a Complaints Committee constitutes a quorum.

16. (1) Duties.—A Complaints Committee shall consider and investigate complaints regarding the conduct or actions of any member of the Corporation, but no action shall be taken by the Committee under clause (2)(a) unless,

- (a) a written complaint has been filed with the Manager and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanation or representations the member may wish to make concerning the matter; and
 - (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.
- (2) **Idem.**—The Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee;
- (b) direct that the matter not be referred under clause (a);
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

17. (1) Discipline Committee.—The Discipline Committee shall be composed of such number of persons as the Council may determine but at least four members of the Committee shall be persons who are not members of the Corporation and who are appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council.

(2) Appointment.—The Council may appoint any individual member of the Corporation to the Discipline Committee.

(3) Chair.—The Council shall appoint one of the members of the Discipline Committee who is a member of Council to be the chair of the Committee.

(4) Composition of panels.—The chair of the Discipline Committee may assign a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council and a panel of the Discipline Committee is sufficient to exercise the jurisdiction and powers of the Discipline Committee if a quorum is present.

(5) Quorum and votes.—Three members of a panel assigned under subsection (4), of whom one shall be a person appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing.

(6) Disability of lay member.—Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing despite his or her absence.

(7) Reference by Council.—The Council may direct the Discipline Committee to hold a hearing and determine any specified allegation of misconduct or incompetence on the part of a member.

18. (1) Duties of Discipline Committee.—The Discipline Committee shall,

- (a) when so directed by the Council or by a Complaints Committee, hear and determine allegations of misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under sections 16 and 22; and
- (c) perform such other duties as are assigned to it by the Council.

(2) Idem.—In the case of hearings into allegations of misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of misconduct or of incompetence.

(3) **Misconduct.**—A member may be found guilty of misconduct by the Committee if,

- (a) the member has been found guilty of an offence relevant to the member's suitability to carry on business as a registered insurance broker upon proof of such conviction; or
- (b) the member has been guilty in the opinion of the Discipline Committee of misconduct as defined in the regulations.

(4) **Incompetence.**—The Discipline Committee may find a member to be incompetent if in its opinion the member has, while acting as an insurance broker, displayed a serious lack of knowledge, skill or judgment or a serious disregard for the welfare of a member of the public.

(5) **Powers of Discipline Committee.**—Where the Discipline Committee finds a member guilty of misconduct or incompetence it may by order,

- (a) revoke the certificate of the member;
- (b) suspend the certificate of the member for a stated period;
- (c) impose such restrictions on the certificate of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum amount prescribed in the regulations to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates;
- (g) impose a requirement that the member reimburse any person who made a complaint against the member for any costs incurred by such person in the proceedings,

or any combination thereof.

(6) **Costs.**—Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Corporation

reimburse the member for the members costs or such portion thereof as the Discipline Committee fixes.

(7) **Stay.**—Where the Discipline Committee revokes, suspends or restricts the certificate of a member on the grounds of misconduct or incompetence, the decision takes effect immediately even though an appeal is taken from the decision unless the court to which the appeal is taken orders otherwise.

(8) **Service of decision of Discipline Committee.**—Where the Discipline Committee finds a member guilty of misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

(9) **Continuation on expiry of Committee membership.**—Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated.

19. (1) Parties to discipline proceedings.—In proceedings before the Discipline Committee, the Corporation and the member of the Corporation whose conduct is being investigated in the proceedings are parties to the proceedings.

(2) **Examination of documentary evidence.**—A member whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(3) **Members holding hearing not to have taken part in investigation, etc.**—Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or the party's representative except upon notice to and opportunity for all parties to participate.

(4) **Hearings in private.**—Despite anything in the *Statutory Powers Procedure Act*, hearings of the Discipline Committee shall be held and are closed to the public, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the Manager before the day fixed for the hearing, the Committee shall conduct the hearing in public except where,

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

(5) **Recording of evidence.**—The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished to the parties at their own cost.

(6) **Evidence.**—Despite the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

(7) **Only members at hearing to participate in decision.**—No member of the Discipline Committee shall participate in a decision of the Committee pursuant to a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

(8) **Release of documentary evidence.**—Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to the person by the Committee within a reasonable time after the matter in issue has been finally determined.

20. (1) **Reference to board of inquiry.**—Where the Manager receives information leading him or her to believe that a member may be an incapacitated member, the Manager shall make such inquiry as he or she considers appropriate and report to the Council who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the Corporation and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

(2) **Examination.**—The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his or her certificate be suspended until he or she complies.

(3) **Hearing by Qualification and Registration Committee.**—The board of inquiry shall report its findings to the Council and deliver a copy thereof and a copy of any medical report obtained under subsection (2) to the member about whom the report is made and if, in the opinion of the Council, the evidence so warrants, the Council shall refer the matter to the Qualification and Registration Committee to hold a hearing and may suspend the member's certificate until the determination of the question of his or her capacity becomes final.

(4) **Parties.**—The Corporation, the person whose capacity is being investigated and any other person specified by the Qualification and Registration Committee are parties to a proceeding under this section.

(5) **Medical evidence.**—A legally qualified medical practitioner is not compellable to produce at the hearing his or her case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him or her and served upon the other parties to the proceeding,

- (a) where the evidence is required by the Corporation, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(6) Powers of Qualification and Registration Committee.—The Qualification and Registration Committee shall, after the hearing,

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his or her certificate,
 - (ii) suspend his or her certificate for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the certificate as the Committee considers appropriate.

21. (1) Appeal to court.—Any party to proceedings before the Discipline Committee or the Qualification and Registration Committee may appeal from its decision or order to the Divisional Court.

(2) Powers of court on appeal.—An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Committee appealed from and may exercise all powers of the Committee and may direct the Committee or the Corporation may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the Committee, or the court may refer the matter back to the Committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

22. (1) Restoration of registration or certificate.—A person whose certificate has been revoked or suspended for cause under this Act may apply at any time in writing to the Manager for the issuance of a certificate or removal of the suspension.

(2) Reference to Discipline Committee.—The Manager shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Qualification and Registration Committee, which shall hold a hearing and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

23. (1) Restraining orders.—Where it appears to the Corporation that a person does not comply with a provision of this Act or the regulations, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Corporation may apply to a judge of the Ontario Court (General Division) for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) Appeal.—An appeal lies to the Divisional Court from an order made under subsection (1).

24. (1) Stop-orders.—Where the Corporation in the absence of evidence to the contrary made a case that a member has been or may be guilty of misconduct in connection with any property in the member's possession or under the member's control, a judge of the Ontario Court (General Division) may, upon an application made without notice by the Corporation, order that the property described in the order shall not be paid out or dealt with by the person or persons named in the order without the leave of a judge of the Ontario Court (General Division).

(2) Appointment of trustee.—Where the Corporation in the absence of evidence to the contrary makes a case that the business of a member or former member is neglected to the prejudice of any person or that the interests of the clients of the member or former member are not being protected or that the member or former member has converted trust funds, a judge of the Ontario Court (General Division) may, upon application made without notice by the Corporation, by order appoint a person as trustee with or without bond, to take possession of any property or undertaking in the possession of or under the control of the member or former member for the purpose of preserving, carrying on or winding up the business of the member or former member.

(3) Idem.—A person appointed under subsection (2) shall, in respect of any trust property of the member or former member, be the trustee thereof, and the person shall in respect thereof take the place of a personal representative, committee or other representative, if any, of the member or former member.

(4) Variation, discharge of order.—Any person may apply to a judge of the Ontario Court (General Division) for an order varying or discharging any order made under subsection (1) or (2).

(5) Remuneration.—The judge may, in an order made under subsection (2), make provision for the remuneration, disbursements and indemnification of the trustee out of such money or otherwise as the judge may specify. S.O. 1993, c. 27, Sch.

25. (1) Investigation of members.—Where the Manager, or in his or her absence, a person designated by the Manager, believes on reasonable and probable grounds that a member has committed an act of misconduct or incompetence, the Manager or the Manager's designate may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person, appointed shall report the result of the investigation to the Manager or the Manager's designate.

(2) Idem.—Where the Manager or the Manager's designate appoints persons to make an investigation to ascertain whether a member has committed an act of misconduct or incompetence involving trust funds, the persons appointed shall include two persons representing the insurers for whom funds were or ought to have been held in trust.

(3) Powers of investigator.—For purposes relevant to the subject-matter of an investigation under this section, a person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the

inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

(4) **Obstruction of investigator.**—No person shall obstruct a person appointed to make an investigation under this section or withhold from him or her or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

(5) **Search warrant.**—Where a justice of the peace is satisfied, upon an application made without notice by a person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (3), issue an order authorizing the person making the investigation, together with such police officer or officers as he or she calls upon for assistance, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

(6) **Removal of books, etc.**—Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (3) or (5) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

(7) **Admissibility of copies.**—Any copy made as provided in subsection (6) and certified to be a true copy by a person making the investigation is admissible in evidence in any action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original book, record or document and its contents.

(8) **Report of Manager.**—The Manager shall report the results of the investigation to the Council or such other committee as he or she considers appropriate.

26. (1) Matters confidential.—Every person employed in the administration of this Act, including any person making an inquiry or investigation under section 25 and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, inquiry or investigation under section 25 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;
- (b) to his or her counsel; or

(c) with the consent of the person to whom the information relates.

(2) **Testimony in civil suit.**—No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him or her in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Act or the regulations or by-laws.

(3) **Privileged information.**—Any information, document, record, statement or thing made or disclosed to the Manager, the Council or a committee of Council concerning a member or a person applying for registration under this Act is privileged and shall not be used as evidence in any civil action or proceeding in any court brought by or on behalf of such member or person.

27. (1) Prohibition re: non-residents.—No certificate shall be issued to a corporation that acts as an insurance broker if the majority of its issued and outstanding shares that entitle the holder to any voting rights are owned beneficially or otherwise by a non-resident of Canada as defined in subsection 400(4) of the *Insurance Act* unless the corporation was licensed as a broker under the *Insurance Act* on the 27th day of April, 1972.

(2) **Prohibition of a non-resident to amalgamate.**—A corporation that was licensed as an insurance broker on or before the 27th day of April, 1972, and whose issued shares entitling the holders thereof to voting rights were more than 50 per cent owned, as of that date, beneficially or otherwise, by one or more non-residents of Canada is not entitled to continue to hold a certificate under this Act if it amalgamates, unites, merges, acquires the assets or business of, or acquires the shares of any other broker or a licensed agent or adjuster.

28. (1) Mailing address.—Every member shall maintain a mailing address in Ontario, which address shall be suitable to permit service by registered mail, and shall register the mailing address with the Manager.

(2) **Personal service.**—Any legal process and any notice or document served personally or served by registered mail at the mailing address registered with the Manager shall be deemed for all purposes to have been served personally upon the member.

(3) **Deemed resident.**—For the purpose of any civil action brought against a member, the member shall be deemed to be a resident of the county in which the mailing address is located.

29. (1) Service of notice.—Subject to section 28, any notice or document required by this Act to be served may be served personally or by prepaid first class mail addressed to the person to whom notice is to be given at his or her last known address and, where notice is served by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that the person, acting in good faith, through absence, accident, illness or other cause beyond the person's control, did not receive the notice, or did not receive the notice until a later date.

(2) **Idem.**—For a period of one year after the date on which a former member ceased to be a member of the Corporation, the mailing address of the former member

registered with the Manager under section 28 shall be deemed to be the former member's last known address unless the former member registers a new mailing address with the Manager.

(3) **Administering oaths.**—Every member of the Qualification and Registration Committee, the Discipline Committee and each Complaints Committee has power to administer oaths and affirmations for the purposes of any of its proceedings.

30. Registrar's certificate as evidence.—Any statement containing information from the records required to be kept by the Manager under this Act, purporting to be certified by the Manager under the seal of the Corporation is admissible in evidence in all courts as proof, in the absence of evidence to the contrary, of the facts stated therein without proof of the appointment or signature of the Manager and without proof of the seal.

31. Corporation, Council and committees.—No action or other proceeding for damages shall be instituted against the Corporation, the Council, a Committee or any member of the Council or committee, or any officers, servants, agents or appointees of the Corporation, for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

32. (1) Trust funds.—All funds received or receivable by a member in the course of business on behalf of insurers from members of the public or on behalf of members of the public from insurers are deemed to be trust funds.

(2) **Idem.**—No member shall assign, pledge, hypothecate or mortgage or in any way charge the funds referred to in subsection (1) whether or not such funds have been received or remain receivable.

(3) **Idem.**—Any assignment, pledge, hypothecation, mortgage or other charge of or on funds referred to in subsection (1) is null and void as against the beneficial owner of the funds.

33. (1) Falsification of certificates.—No person shall make or cause to be made any wilful falsification in any matter relating to a register or issue a false certificate or document with respect to registration.

(2) **False representations, etc.**—No person shall wilfully procure or attempt to procure himself, herself or itself or any other person to be registered under this Act by knowingly making any false representation or declaration or by making any fraudulent representation or declaration, either orally or in writing.

34. (1) Offence.—Every person who contravenes any provision of this Act and every director or officer of a corporation or unincorporated association and every member of a partnership who knowingly concur in such contravention is guilty of an offence and on conviction is liable to a fine of \$100,000 or to imprisonment for a term of not more than six months, or to both.

(2) **Corporation.**—Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$200,000 and not as provided therein.

(3) **Limitation period.**—No proceeding under this section shall be commenced more than five years after the time when the subject-matter of the proceeding arose.

35. Regulations.—The Lieutenant Governor in Council may make regulations,

- (a) respecting and governing the nomination, election and term of office of the members to be elected to the Council, the filling of vacancies on the Council and controverted elections;
- (b) governing the size and composition of the Council;
- (c) respecting any matter ancillary to the provisions of this Act with regard to the issuing, renewal, suspension and revocation of certificates;
- (d) providing for the expiration of certificates and governing and establishing the requirements and qualifications for the issuing and renewal of certificates;
- (e) providing for the maintenance and inspection of registers;
- (f) governing standards of practice for registered insurance brokers;
- (g) defining misconduct for the purposes of this Act and providing for a code of conduct;
- (h) providing for a program for the continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (i) respecting the reporting and publication of decisions in disciplinary matters;
- (j) providing for the compilation of statistical information on the supply, distribution and business activities of members and requiring members to provide the information necessary to compile such statistics;
- (k) respecting returns, reports, information or disclosure to be provided or made by members to the Corporation, the Superintendent, members of the public or any other person or persons;
- (l) fixing maximum fines that may be imposed upon members found guilty of misconduct;
- (m) establishing rules of practice and procedure for hearings held under this Act;
- (n) respecting trust funds and the keeping of trust accounts by members;
- (o) respecting the reporting and auditing of members' accounts and specifying the type and nature thereof;
- (p) requiring the filing of financial guarantees by members of the Corporation and respecting the collateral security for terms, conditions and form of financial guarantees;

- (q) establishing and governing minimum indemnity insurance requirements for members and requiring and respecting errors and omissions insurance;
- (r) establishing and governing minimum equity capitalization requirements for members;
- (s) establishing and respecting restrictions and limitations on the sale and ownership of insurance brokers and the businesses of insurance brokers;
- (t) prescribing forms and providing for their use;
- (u) exempting any person or group of persons from all or part of the provisions of this Act and the regulations subject to such terms and conditions as may be set out in the regulations.

36. (1) Transition.—Despite any other provision of this Act, a person holding a valid licence as an insurance agent or an insurance broker under the *Insurance Act* issued before the 1st day of October, 1981, who was an insurance broker within the meaning of insurance broker contained in this Act, shall be deemed to be a registered insurance broker under this Act and the person shall be so registered as a member by the Manager.

REGULATION 989

COMPOSITION AND ELECTION OF COUNCIL

R.R.O. 1990, Reg. 989;
as am. O. Reg. 374/94, ss. 1, 2(1)-(2)

1. (1) Despite clauses 6(2)(a) and (b) of the Act,
 - (a) the number of individual members of the Corporation elected to the Council by the members of the Corporation shall be nine; and
 - (b) the number of persons appointed to the Council by the Lieutenant Governor in Council shall be four,
- (2) Each person who is an individual member of the Corporation and,
 - (a) who is qualified to vote at an election of members of the Council;
 - (b) who is a Canadian citizen ordinarily resident in Ontario or a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Ontario, except a permanent resident who has been ordinarily resident in Ontario for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship;
 - (c) who is nominated in accordance with section 8; and
 - (d) whose conduct is not the subject of a complaint referred to the Discipline Committee or the subject of disciplinary proceedings before the Discipline Committee,

is eligible to stand for election to the Council in accordance with this Regulation.

2. (1) An election of members to the Council shall take place on the first Monday of November in every year and at each election three persons shall be elected to the Council for a term of three years.

(2) At each election referred to in subsection (1), the Manager shall ensure that at least one candidate for election to the Council is, as of the date of his or her nomination, an officer, director, partner or employee of a member employing twenty or more individual members in the Corporation qualified to vote at an election of the Council and at least one candidate for election to the Council is, as of the date of his or her nomination, a sole proprietor or an officer, director, partner or employee of a member employing fewer than twenty individual members.

(3) The term of office of a person elected to the Council at an election shall commence at the first meeting of the Council after the first annual meeting after his or her election and continue for the applicable period set out in subsection (1) or until the first meeting of the Council after the first annual meeting after the election of his or her successor.

(4) Where an election of members to the Council is not held, the elected members of the Council then in office shall continue in office until their successors are elected.

3. The Manager shall ensure, where possible, upon an election of members to the Council, that the Council is composed of at least two members who are officers, directors, partners or employees of members employing twenty or more individual members in the Corporation qualified to vote at an election of the Council and at least two members who are sole proprietors or officers, directors, partners or employees of members employing fewer than twenty individual members.

4. Where an elected member of the Council,

- (a) dies or resigns;
- (b) ceases to be a person who would be eligible to stand for election to the Council under subsection 1(2);
- (c) is the subject of a receiving order under the *Bankruptcy Act* (Canada) or makes an assignment under the *Bankruptcy Act* (Canada) or any similar order or assignment is made against or by him or her under the bankruptcy or insolvency laws of any other jurisdiction; or
- (d) has been found by a court of competent jurisdiction in Canada or elsewhere to be of unsound mind,

the person shall be deemed to no longer be a member of the Council and the person's place on the Council shall be considered to be vacant.

(5) A person shall not hold office as an elected member of the Council for more than two consecutive terms.

(6) Subsection (5) does not prevent a person from holding office as an elected member of the Council for the term in respect of which the 1994 election is held if, during the six months before the 1993 election, the person resigned from office as an elected member of the Council. O. Reg. 374/94, s. 2(2).

5. (1) Where a vacancy occurs on the Council as set out in section 4, the Council shall, subject to section 3, appoint a person who meets the criteria set out in clauses 1(2)(a), (b) and (d) to fill the vacancy, but, where at the last election there were more qualified candidates than Council members to be elected, the Council shall, as soon as convenient at a meeting of the Council, fill the vacancy by appointing to the Council the qualified candidate, if any, having the highest number of votes among the candidates who were not elected.

(2) A member appointed under subsection (1) shall hold office until the expiry of the term of office of the Council member whose seat became vacant.

6. (1) Every election of members to the Council shall be presided over and conducted by the Manager.

(2) The Council shall, on or before the 15th day of September in a year of an election of members to the Council, appoint with the consent of the persons appointed, as many

individual members of the Corporation who are not candidates for election as the Council considers necessary to act as scrutineers at the election.

(3) The Manager may fill any vacancy that may occur in the office of scrutineer from individual members who are not candidates for election and may appoint temporarily any individual member who is not a candidate for election to act as substitute for a scrutineer during the absence of a scrutineer.

7. The Manager shall, on or before the 15th day of July in a year of an election of members to the Council, forward a written notice to every member entitled to vote that states,

- (a) that an election will be held;
- (b) the number and term of Council members to be elected;
- (c) the criteria for eligibility to stand for election set out in subsection 1(2); and
- (d) that nominations must be received in writing by the Manager not later than 4 p.m. on the 15th day of September in that year.

8. (1) The nomination of a candidate for election as a member of the Council in an election shall,

- (a) be in writing addressed to the Manager;
 - (b) be signed by at least fifteen individual members qualified to vote at an election of the Council who shall clearly print or type opposite their signature their name, registration number and the name of the member, if any, with whom they are an officer, director, partner or employee;
 - (c) shall identify the candidate as an officer, director, partner or employee of a member employing twenty or more individual members in the Corporation qualified to vote at an election of the Council or as being a sole proprietor or an officer, director, partner or employee of a member employing fewer than twenty individual members and shall state the name of the member, if any, with whom the candidate is an officer, director, partner or employee;
 - (d) shall be delivered to and received by the Manager not later than 4 p.m. on the 15th day of September in the year of the election; and
 - (e) shall be dated and signed by the candidate and signify that the candidate consents to the nomination.
- (2) The following material may be submitted with a nomination of a candidate:
- 1. A head and shoulders black and white passport sized photograph of the candidate printed on glossy paper or a negative thereof.
 - 2. A biography of the candidate of up to 100 words that is confined to professional qualifications and a record of community service.

(3) No person shall stand for election as a member of the Council at an election unless the person has been nominated as set out in subsection (1).

(4) As soon as practicable after the receipt of a nomination, the Manager shall notify the candidate in writing that a nomination has been received, whether or not the nomination is in order and, where the nomination is not in order, where it is deficient.

(5) Where a nomination is in order, the Manager shall notify the candidate of the form in which the candidate's name is to appear on the ballot at time of the election.

(6) The failure of the Manager to notify a candidate as required under subsection (4) or (5) or the non receipt of such a notification by a candidate does not invalidate the election.

9. (1) Where the number of persons nominated as candidates for election to the Council at an election is equal to or less than the number to be elected in that year, the persons so nominated shall be deemed to be elected as members of the Council in that year and there shall be no poll.

(2) Where the number of persons nominated as candidates for election to the Council at an election is greater than the number to be elected in that year, there shall be a poll and the Manager shall, at least twenty-one days before the date of the election, send to each individual member of the Corporation entitled to vote,

- (a) a ballot in the form approved by the Council;
- (b) instructions for voting;
- (c) a return envelope; and
- (d) a booklet containing,
 - (i) the name of each candidate,
 - (ii) a photograph of each candidate, where provided,
 - (iii) a biography of each candidate that is confined to professional qualifications and a record of community service as provided by each candidate or as prepared by the Manager from the Corporation's records, and
 - (iv) the name of the member, if any, with whom the candidate is an officer, director, partner or employee and the names of the first fifteen nominators of the candidate together with the name of the member, if any, with whom each nominator is an officer, director, partner or employee.

10. Voting shall be by secret ballot and be so conducted that no person will be able to know for whom any person has voted.

11. (1) The Manager shall, on or before the 31st day of August in the year of an election of members to the Council, compile and sign an alphabetical list of individual members who are qualified to vote at the election.

(2) The list referred to in subsection (1) may be examined by any member during normal business hours of the Corporation at the office of the Manager.

(3) Where a member complains in writing to the Manager, on or after the 1st day of September up to and including the 15th day of September in the year of the election,

of the improper omission from or insertion of any name on the list referred to in subsection (1), the Manager shall forthwith examine the complaint and rectify any error he or she may find.

12. (1) The Manager may receive ballots by mail or personal delivery up to 4 p.m. on the day of the election.

(2) The ballots shall be opened under the supervision of the Manager or his or her representative in the presence of two scrutineers who shall,

- (a) examine and count the ballots; and
- (b) record the number of votes cast and the number received by each nominee.

(3) Any person who is qualified to vote at an election of members of the Council may be present in person or by agent at the counting of the ballots, including the tie breaking procedures referred to in subsection (6).

(4) An individual member who is qualified to vote at an election of members of the Council may vote for up to four candidates whose names are on a ballot but where the member votes for more than four candidates the ballot is invalid.

(5) A vote cast for a person whose name is not on a ballot does not in itself invalidate the ballot but the vote shall not be counted when reporting the results of the election.

(6) Where two or more candidates receive an equal number of votes such that the election of one or more Council members is undecided, the scrutineers shall forthwith put into a ballot box one ballot for each candidate who received the same number of votes and the Manager or his or her representative shall draw by chance from the ballot box, in the presence of an officer of the Council elected pursuant to a by-law passed under subsection 11(1) of the Act or the officer's representative, one or more of such ballots sufficient to make up the required number of members to be elected to the Council and the candidates whose names are so drawn shall be considered to be elected as members of Council.

13. (1) Subject to section 3, the candidates who receive the highest number of votes at the election as reported by the scrutineers shall be certified forthwith by the Manager as being elected as members of the Council.

(2) The Manager shall forthwith after making the certification referred to in subsection (1),

- (a) report the results of the election to the Council;
- (b) inform each member who is elected to the Council of the time and place of the first regular meeting of the Council following the election;
- (c) inform each candidate of the results of the election and the number of votes cast for each candidate; and
- (d) report the results of the election to the members at the next annual meeting.

14. (1) The Manager shall destroy all ballots after thirty-one days have expired following the report to the members of the results of an election, except where a candidate requests a recount under subsection (2) or petitions against the election under section 15.

(2) Where the Manager receives a request in writing for a recount of ballots cast at the election from a member who is qualified to vote at an election of members to the Council within fourteen days after the date of the election, the Manager shall, where in the Manager's opinion the request is reasonable having regard to the number of votes separating the candidates at the election, cause a recount to be held within thirty days from the date of the request.

(3) A recount shall be presided over by the Manager who,

(a) shall set a date for the recount;

(b) shall give notice in writing to all candidates at least fifteen days before the date set for the recount that a recount has been required and the date on which it will be held;

(c) shall notify each candidate that each candidate or their agent is entitled to be present to examine all ballots and to satisfy themselves that all ballots have been properly filled out and taken into account;

(d) may accept a ballot or reject a ballot where it is invalid;

(e) shall declare the results of the recount in the same manner as set out in clauses 13(2)(a), (b) and (c); and

(f) report the results of the recount to the members as soon as is practicable.

(4) Where two or more candidates receive an equal number of votes on the recount, the Manager shall repeat the procedure referred to in subsection 12(6) unless such procedure was followed on the original ballot count, in which event the Manager shall certify that the candidate originally certified by him or her to be elected under the procedure set out in subsection 12(6) is elected.

(5) Where there has been a recount, the Manager shall destroy all ballots after thirty-one days have expired following the report to the members of the results of the recount.

15. (1) A member who is qualified to vote at an election of members of the Council may, where the member files a petition in accordance with subsection (2), petition the Council against the election of any Council member as not being duly elected or qualified to stand for election.

(2) A petition shall,

(a) be filed with the Manager within fourteen days following the day on which the results of the election certified by the Manager under subsection 13(1) are announced to the members; and

(b) contain a statement, signed by a member qualified to vote at an election of members to the Council, of the grounds on which the election is disputed.

(3) A copy of the petition shall be delivered within fourteen days of the filing of the petition with the Manager to the member of the Council whose election or qualification is being disputed.

(4) Where a petition is filed with the Manager and the Manager is of the opinion that the petition sets out grounds that indicate that the election was not held in accordance with this Regulation, the Manager shall so inform the Council and the Council shall appoint a committee to inquire into the matters raised in the petition and the committee shall report thereon to the Council as soon as is practicable.

(5) The committee that is appointed under subsection (4) shall appoint a day, time and place for the hearing of the petition and give notice thereof to the petitioner and the person who is the subject matter of the petition.

(6) Upon receipt of a report of the committee appointed under subsection (4), the Council shall determine whether the person who is the subject matter of the petition was duly elected or not or if the person was qualified to stand for election.

(7) Where the person who is the subject matter of the petition is found to be not duly elected or not qualified to stand for election, the person shall be deemed to no longer be a member of the Council and his or her place on the Council shall be considered to be vacant and shall be filled in accordance with section 5.

(8) Where there has been a petition against the election of any Council member as not being duly elected or qualified to stand for election, the Manager shall destroy all ballots after thirty-one days have expired following the determination of the Council under subsection (6).

16. Where the time limited for the doing of anything in an election falls on a Saturday or a holiday, the time so limited extends to and the thing may be done on the day next following that is not a Saturday or a holiday.

17. The accidental omission to give any notice or send any document required by this Regulation to be sent to any member or member of the Council or the non receipt of any notice or document required by this Regulation by any such person or any error in any notice or document required by this Regulation not affecting the substance of the notice or document does not invalidate any action taken pursuant to the notice or document or invalidate any action taken at any meeting held pursuant to the notice or any action that results from any such meeting.

18. When there is an interruption of mail service during a nomination or election, the Manager may extend the holding of nominations and the election for such minimum period of time as the Manager considers necessary to compensate for the interruption.

REGULATION 990

EXEMPTIONS

R.R.O. 1990, Reg. 990

1. Every member in good standing of the Risk Management Consultants of Ontario who provides only risk management consulting services and who does not engage in any other activity normally carried out by an insurance broker is exempt from the provisions of the Act and the regulations.

REGULATION 991

GENERAL

R.R.O. 1990, Reg. 991, as am. O. Reg. 72/96

1. In this Regulation, “trust account” includes a receipt, certificate or other instrument issued by a bank listed in Schedule I or II to the *Bank Act* (Canada), trust corporation, loan corporation, credit union or Province of Ontario Savings Office or by the Government of Canada or a Province of Canada evidencing a deposit made in trust by the member for a term not exceeding one year if the principal sum evidenced by the receipt, certificate or other instrument is redeemable on demand.

2. (1) An application for a certificate of registration as an insurance broker shall be made by completing and filing with the Manager an application in Form 2A, 2B or 2C, as applicable.

3. (1) Every certificate of registration as an insurance broker expires with the 30th day of September in each year.

(2) An application for renewal of a certificate of registration as an insurance broker shall be made by completing and filing with the Manager a renewal in Form 3A or 3B, as applicable, at least thirty days before the registration is due to expire.

4. Where information contained in the latest filed application, information or renewal form becomes obsolete, the member who had filed the form shall file a notice of change correcting the information within thirty days after the change takes place.

5. (1) An individual is qualified to be issued and hold a certificate of registration as an insurance broker where,

(a) the individual,

(i) has attained the age of majority,

(ii) is of good character and has demonstrated reasonable grounds for belief that he or she will carry on business in accordance with law, integrity and honesty,

(iii) has not been convicted of any offence the nature of which renders him or her unfit to act as a broker,

(iv) has not been refused a licence under the *Insurance Act* or had a licence suspended or revoked for a reason that renders him or her unfit to act as an insurance broker,

(v) satisfies the educational and experience requirements established by the Qualification and Registration Committee, and

(vi) has complied with the provisions of this Regulation; and

(b) the individual's only business or employment is that of,

- (i) an insurance broker, or
- (ii) an insurance broker and life insurance agent, and
- (iii) such other business as the Qualification and Registration Committee considers appropriate when carried on in accordance with such terms as the Committee stipulates.

(2) Clause (1)(b) does not apply to disqualify an individual who,

- (a) became registered under section 36 of the Act;
- (b) conducted or was employed in the additional business immediately preceding the 1st day of October, 1981; and
- (c) immediately preceding the 1st day of October, 1981, was not in contravention of the *Insurance Act* or the regulations thereunder by continuing the additional business.

(3) Subclauses (1)(a)(iii) and (iv) do not apply to disqualify an individual who the Qualification and Registration Committee is satisfied will carry on business in accordance with law, integrity and honesty, after having regard to,

- (a) the circumstances under which the offence was committed or the licence was refused, suspended or revoked; and
- (b) the time elapsed since the offence was committed or the licence was refused, suspended or revoked.

6. (1) A corporation is qualified to be issued and hold a certificate of registration as an insurance broker where,

- (a) the only business conducted by it is that of,
 - (i) an insurance broker, or
 - (ii) an insurance broker and life insurance agent, and
 - (iii) such other business as the Qualification and Registration Committee considers appropriate when carried on in accordance with such terms as the Committee stipulates;
- (b) the corporation acts as an insurance broker under the direction and supervision of a principal broker as described in section 7.2;
- (c) the majority of each class of its issued and outstanding shares are beneficially owned directly or indirectly by one or more persons who are registered insurance brokers or who are licensed or registered to act as intermediaries for insurance, other than life insurance, under the law of another jurisdiction in which they reside; and

(d) it has complied with the provisions of this Regulation.

(2) Clause (1)(a) does not apply to disqualify a corporation that,

- (a) became registered under section 36 of the Act;
 - (b) conducted the additional business immediately preceding the 1st day of October, 1981; and
 - (c) immediately preceding the 1st day of October, 1981, was not in contravention of the *Insurance Act* or the regulations thereunder by continuing the additional business.
- (3) Clause (1)(c) does not apply to a corporation that,
- (a) became registered under section 36 of the Act; and
 - (b) has one or more classes of shares issued and outstanding that do not conform to the majority ownership requirement of that clause,

where the proportion of each such class beneficially owned by persons who are not registered insurance brokers or who are not licensed or registered to act as intermediaries for insurance, other than life insurance, under the laws of another jurisdiction in which they reside, has not increased above the proportion owned by such persons on the 1st day of October, 1981.

(4) Clause (1)(c) does not apply to a corporation whose shares were listed for trading on any Canadian stock exchange on the 1st day of October, 1981. O. Reg. 72/96, s. 1.

7. (1) A partnership is qualified to be issued and hold a certificate of registration as an insurance broker where,

- (a) the only business conducted by it is that of,
 - (i) an insurance broker, or
 - (ii) an insurance broker and life insurance agent, and
 - (iii) such other business as the Qualification and Registration Committee considers appropriate when carried on in accordance with such terms as the Committee stipulates;
 - (b) the partnership acts as an insurance broker under the direction and supervision of a principal broker as described in section 7.2;
 - (c) the majority equity interest and the majority voting interest are held by persons who are registered insurance brokers who are licensed or registered to act as intermediaries for insurance, other than life insurance, under the laws of another jurisdiction in which they reside; and
 - (d) it has complied with the provisions of this Regulation.
- (2) Clause (1)(a) does not apply to disqualify a partnership that,
- (a) became registered under section 36 of the Act;
 - (b) conducted the additional business immediately preceding the 1st day of October, 1981; and
 - (c) immediately preceding the 1st day of October, 1981, was not in contravention

of the *Insurance Act* or the regulations thereunder by continuing the additional business.

- (3) Clause (1)(c) does not apply to a partnership that,
 - (a) became registered under section 36 of the Act; and
 - (b) does not conform to the majority ownership and control requirements of that clause,

where the proportion of the equity interest and voting interest held by persons who are not registered insurance brokers or who are not licensed or registered to act as intermediaries for insurance, other than life insurance, under the laws of another jurisdiction in which they reside, has not increased above the proportion held by such persons on the 1st day of October, 1981. O. Reg. 72/96, s. 2.

- (a) the only business conducted by it is that of an insurance broker or both an insurance broker and life insurance agent and such other business as the Qualification and Registration Committee considers appropriate when carried on in accordance with such terms as that committee stipulates;
- (b) the sole proprietorship acts as an insurance broker under the direction and supervision of a principal broker as described in section 7.2; and
- (c) the sole proprietorship has complied with this Regulation.

(2) Clause (1)(a) does not apply to disqualify a sole proprietorship that,

- (a) became registered under section 36 of the Act;
- (b) conducted the additional business immediately before October 1, 1981; and
- (c) immediately before October 1, 1981 was not in contravention of the *Insurance Act* or the regulations under it by continuing the additional business.

7.2 (1) A sole proprietorship, partnership or corporation which holds or wishes to hold a certificate of registration as an insurance broker shall designate an individual who is an insurance broker to be the principal broker of the business.

- (2) A member qualifies to be designated as a principal broker if the member,
 - (a) is not in default of paying any fee due under the Act or the by-laws of the Corporation;
 - (b) is not, at the time the notification referred to in subsection (3) is made, the subject of a complaint referred to the Discipline Committee or the subject of disciplinary proceedings before the Discipline Committee;
 - (c) is not the subject of an outstanding order of the Discipline Committee;
 - (d) is not in a class of membership which restricts him or her to acting under supervision;
 - (e) is the sole proprietor or an employee of a sole proprietorship, is a partner or is an officer or director of the corporation, as appropriate; and

- (f) directs and supervises the sole proprietorship, partnership or corporation in acting as an insurance broker and has the authority to act in its name and on its behalf regarding applications or reports required under this Act or the by-laws of the Corporation.

(3) A member shall not be designated as a principal broker until the member has notified the Corporation in writing that he or she meets the criteria described in subsection (2) and the Corporation has acknowledged the notice in writing.

(4) In order to maintain his or her status as a principal broker, the member shall satisfy such educational requirements as are established by the Council within the time periods established by the Council.

(5) The principal broker may appoint one or more deputies to perform such duties as may be delegated to him or her in writing by the principal broker.

(6) This section, except subsection (5), applies to a deputy principal broker in the same way it applies to a principal broker. O. Reg. 71/96, s. 3.

8. No person shall be issued a certificate of registration as an insurance broker where the Qualification and Registration Committee is satisfied that,

- (a) the applicant; or

(b) a person occupying office space in the same business premises as the applicant, is in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business.

9. (1) Every member acting on behalf of a member of the public in negotiating or placing contracts of insurance with one or more insurers shall provide a policy or certificate of coverage to the member of the public for whom the member acts within twenty-one days after the placing of insurance certifying that the insurance has been placed, and at the same time shall send a copy of the policy or certificate of coverage to each of the insurers whose names appear on the policy or certificate.

- (2) The certificate of coverage shall set out,

- (a) the name and mailing address of the insured;

- (b) a description of the coverage provided;

- (c) the full name of each insurer, or other person authorized to undertake the contract;

- (d) the amount of insurance placed with each insurer. O. Reg. 637/81, s. 10.

10. (1) A member shall not act or assist in the placing of insurance with an unlicensed insurer unless,

- (a) the member has informed the member of the public for whom the member acts of the following risks of entering into a contract of insurance with an insurer not licensed under the *Insurance Act*:

1. That the insurer is not subject to regulation under the *Insurance Act*.
2. Orderly payment of claims may be more difficult than with an insurer licensed under the *Insurance Act*.
3. The Superintendent has no authority under the *Insurance Act* in respect of the insurer.
4. Provincial and federal taxes payable;
- (b) the member has obtained the written consent of the member of the public for whom the member acts; and
- (c) sufficient insurance cannot be obtained at reasonable rates or on the form of contract required by the member of the public from insurers licensed under the *Insurance Act*.

(2) A member shall not act or assist in the placement of automobile insurance with an unlicensed insurer except automobile insurance in excess of the minimum liability coverage required by the *Insurance Act*.

(3) A member who places insurance with an unlicensed insurer shall, within thirty days after the last day of March, June, September and December of each year,

- (a) file with the Superintendent a return under oath or affirmation in the form and manner required by the Superintendent, containing particulars of all insurance effected under this section by the member during the period covered by the return; and
- (b) at the same time, in respect of all premiums on such insurance, pay to the Treasurer of Ontario the premium taxes that would be payable if such premiums had been received by a licensed insurer.

11. (1) A member shall not knowingly act or aid in soliciting, negotiating or procuring any contract of insurance with an insurer,

- (a) in which the member directly or indirectly holds shares;
- (b) who, directly or indirectly holds shares in the member; or
- (c) who, directly or indirectly has common ownership with the member,

unless,

- (d) the relationship between the member and the insurer is specified in the certificate of coverage required by section 9 and on the face of the policy provided to the insured.

(2) Subsection (1) does not apply in a situation where the shares held carry less than 10 per cent of the voting rights attached to all voting securities of the issuer.

12. (1) Where a member proposes to charge a fee for service in addition to retaining a portion of the premium charge, the member, before placing the insurance or providing a service for which a fee is to be charged, shall disclose to the person whom the member

proposes to charge the amount of the fee, the portion of the premium retained and the total remuneration on the transaction.

(2) Interest charges with respect to overdue accounts or accounts paid on an installment plan shall not be construed to be fees for services for the purposes of subsection (1).

13. (1) No member shall act as a real estate salesperson for a broker registered under the *Real Estate and Business Brokers Act* who is not a member.

(2) A member who is also registered as a real estate broker under the *Real Estate and Business Brokers Act* shall not pay commission on insurance to any salesperson or other person, whether employed by the member or not, who is not a member.

14. All members shall act as insurance brokers in accordance with the following code of conduct:

1. A member shall discharge the member's duties to clients, members of the public, fellow members and insurers with integrity.
2. A member owes a duty to the member's client to be competent to perform the services which the member undertakes on the client's behalf.
3. A member shall serve the member's client in a conscientious, diligent and efficient manner and shall provide a quality of service at least equal to that which members would generally expect of a member in a like situation.
4. A member shall be both candid and honest when advising the member's client.
5. A member shall hold in strict confidence all information acquired in the course of the professional relationship concerning the business and affairs of the member's client, and the member shall not divulge any such information unless authorized by the client to do so, required by law to do so or required to do so in conducting negotiations with underwriters or insurers on behalf of the client.
6. A member shall observe all relevant rules and laws regarding the preservation and safekeeping of property of the client entrusted to the member and, when there are no such rules or laws or the member is in doubt, the member must take the same care of such property as a careful and prudent person would take of the person's own property of like description.
7. A member who engages in another business or occupation concurrently with the practice of the member's vocation shall not allow such outside interest to jeopardize the member's integrity, independence or competence.
8. A member shall not stipulate, charge or accept any fee that is not fully disclosed, or the basis for which is not fully disclosed prior to the service being rendered, or which is so disproportionate to the service provided as to be unconscionable.
9. A member shall encourage public respect for and try to improve the practice of the member's vocation.
10. A member shall make the member's services available to the public in an

efficient and convenient manner which will command respect and confidence and which is compatible with the integrity, independence and effectiveness of the member's vocation.

11. A member shall assist in maintaining the integrity of the member's vocation and should participate in its activities.
12. A member shall assist in preventing the unauthorized practice of the member's vocation.
13. A member's conduct towards other members, members of the public, insurers and the Corporation shall be characterized by courtesy and good faith.
15. (1) For the purposes of the Act, "misconduct" means any of the following:
 1. The use of methods of solicitation and advertising that are not compatible with the honour and dignity of the vocation including, without limiting the generality of the foregoing, the use of any illustration circular or memorandum that misrepresents, or by omission is so incomplete that it misrepresents the terms, benefits or advantages of any policy or contract of insurance issued or to be issued, and the making of any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued.
 2. The use of any incomplete comparison of any policy or contract of insurance with that of any other insurer for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract.
 3. The use of any payment, allowance or gift, or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure.
 4. Directly or indirectly making or attempting to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or paying, allowing or giving, or offering or agreeing to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy or any other consideration or thing of value intended to be in the nature of a rebate of premium to any person insured or applying for insurance in respect of person or property in Ontario, but nothing in this paragraph shall be construed to affect any payment in the nature of a dividend, bonus, profit or savings that is provided for in the policy.
 5. Coercing or proposing, directly or indirectly, to coerce a prospective buyer of insurance through the influence of a professional or business relationship or otherwise to give a preference that would not otherwise be given on the effecting of an insurance contract or coercing, inducing or exercising undue influence in order to control, direct or secure insurance business.
 6. Holding oneself out or advertising by means of advertisements, cards, circulars, letterheads, signs, or other methods, or carrying on business in any other manner

than the name in which the individual or the corporation or partnership of which the individual is the designated representative is registered.

7. The use of any practice or conduct that results in unreasonable delay or resistance to the fair adjustment of claims.
8. Failure to carry on business in a manner consistent with the code of conduct.
9. Failure to comply with the provisions of the Act and this Regulation.
10. Acting as an insurance agent or holding himself, herself or itself out, advertising or conducting himself, herself or itself in such a manner as to lead a reasonable person to believe that the member is an insurance agent.
11. Being convicted, after the 1st day of October, 1981, of a criminal offence or an offence under the *Insurance Act*, whether or not the offence was committed before the 1st day of October, 1981.
12. The use or payment of any referral fees or finder's fees to any person who is not a registered insurance broker or who is not registered or licensed under the laws of any jurisdiction to act as an intermediary for insurance, other than life insurance.
13. A registered insurance broker who is a director, officer or principal broker of a corporation that is a member or who is a partner or principal broker of a partnership that is a member or who is the principal broker of a sole proprietorship that is a member has knowingly concurred in the misconduct of the sole proprietorship, partnership or corporation.
14. Providing false or misleading information to the Corporation.
15. Acting as a principal broker as described in section 7.2 when the member has failed to comply with the educational requirements established by the Council under that section.
16. Failure as a principal broker to properly supervise brokers whose registration is restricted to acting under his or her direction and supervision.

(2) Nothing in this section shall be construed to prohibit a member from being licensed as and acting as a life insurance agent under the *Insurance Act*. O. Reg. 72/96, s. 4.

16. (1) Subject to subsections (2) and (3), every member who is a sole proprietor, partnership or corporation shall maintain, for all trust funds received, a trust account or trust accounts at any Ontario branch of,

- (a) a bank listed in Schedule I or II to the *Bank Act* (Canada);
- (b) a trust corporation;
- (c) a loan corporation;
- (d) a credit union authorized by law to receive money on deposit; or
- (e) a Province of Ontario Savings Office,

and each such account shall be kept in the name of the member and designated as a trust account.

(2) On application, the Council shall permit a member who is licensed or registered as an insurance broker or agent in four or more provinces of Canada and maintains offices in each of them to maintain the member's trust account in any such province at a branch of,

- (a) a bank listed in Schedule I or II to the *Bank Act* (Canada);
- (b) a trust corporation;
- (c) a loan corporation; or
- (d) a credit union authorized by law to receive money on deposit,

that is not in Ontario, but the Council may, for good and due cause,

- (e) impose such terms and conditions as it considers appropriate; and
- (f) revoke its permission at any time.

(3) On application, the Council may permit a member who is licensed or registered as an insurance broker or agent in two or more provinces of Canada to maintain the member's trust account in any such province at a branch of,

- (a) a bank listed in Schedule I or II to the *Bank Act* (Canada);
- (b) a trust corporation;
- (c) a loan corporation; or
- (d) a credit union authorized by law to receive money on deposit,

that is not in Ontario, but the Council may,

- (e) impose such terms and conditions as it considers appropriate; and
- (f) revoke its permission at any time.

(4) All trust money received by a member, whether by cash, cheque or otherwise, shall be deposited in the member's trust account or trust accounts without delay, and in any case shall not knowingly be later than three banking days after the day the money was received, but money belonging to the member may be withdrawn from the trust account if the money is thereupon deposited in the member's general account.

(5) No member shall disburse or withdraw any money held in trust, except in accordance with the terms and conditions upon which the money was received or as otherwise provided in this section.

(6) At all times, a member shall maintain in the member's trust account money that is sufficient, together with the member's trust funds receivable, to meet all the member's trust obligations.

(7) When so requested in writing by the Manager, Council, or a committee thereof or their representative, every member shall, within thirty days after the request, account for all trust funds received by the member.

(8) No member who is not a sole proprietor, partnership or corporation shall control trust funds or maintain a trust account in the member's own name.

(9) All cheques drawn on a trust account shall have the words "trust account" and the name of the member in whose name the trust account is kept imprinted thereon.

17. (1) Every member who is required to maintain a trust account shall maintain books, records and accounts in connection with the member's business to record,

- (a) all money received in trust for insurers or members of the public;
- (b) all disbursements out of money held in trust;
- (c) all other money received and disbursed in connection with the business; and
- (d) all specifically identified property other than money held in trust including marketable securities, stock certificates, bonds, debentures, deposit receipts, treasury bills or other negotiable instruments and any other thing of value or instrument that could be negotiated by the broker.

(2) As a minimum requirement to comply with subsection (1), every member who is required to maintain a trust account shall maintain,

- (a) a book or other permanent account record showing all receipts and disbursements of money, distinguishing therein between,
 - (i) the receipt of money in trust for insurers and members of the public and disbursements out of money held in trust, and
 - (ii) money received and money paid on his own account;
- (b) a record in the form of a remuneration book or file or copies of billings showing all commissions or fees charged or billings to members of the public;
- (c) bank statements or pass books, cashed cheques and detailed deposit slips for both trust and general accounts;
- (d) a record showing the monthly totals of the trust assets and trust liabilities as they appear from the books and records of the member; and
- (e) a listing or other record showing all specifically identified property held in trust from time to time for insurers or members of the public.

(3) The Manager, Council or a committee thereof or their representative is entitled to inspect the books and records required to be kept under this section at any time.

(4) Every member who is required to maintain a trust account shall provide the Manager with a current audited financial statement within thirty days after written request therefor from the Manager, Council or a committee thereof.

(5) Every member who is required to maintain a trust account shall maintain accounting records in accordance with generally accepted accounting principles.

(6) Where this Regulation requires a record to be kept by a member, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device.

- (7) Where a record is not kept in a bound book, the member shall,
- (a) take adequate precautions, appropriate to the means used, for guarding against the risk, of falsifying the information recorded; and
 - (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record.

(8) The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause (7)(b) is admissible in evidence as proof, in the absence of evidence to the contrary, of all facts stated therein.

(9) Where this Regulation requires a record to be kept by a member, it shall be preserved for at least the six-year period previous to the most recent fiscal year-end of the member.

18. (1) Council may, upon application, specify terms with which the applicant must comply in the alternative to complying with sections 16, 17 and 21.

(2) Council must be satisfied that the terms specified in subsection (1) provide an equivalent level of protection to sections 16, 17 and 21.

(3) Without limiting the generality of subsection (1), Council may, under subsection (1), specify as a term the posting of a surety bond by the applicant payable to the Corporation as obligee.

19. Every member who is a sole proprietor, partnership or corporation is required to maintain, at all times, an equity capitalization of not less than an amount equal to the maximum deductible amount of the member's errors and omissions and fidelity insurance policies or,

- (a) in the case of a member who is a sole proprietor, \$2,500; or
- (b) in the case of a member who is a corporation or partnership, \$5,000,

whichever is the greater.

20. (1) Every member who is a sole proprietor, partnership or corporation shall maintain and continue to maintain,

- (a) errors and omissions insurance with extended coverage for loss resulting from fraudulent acts; or
- (b) some other form of financial guarantee,

in a form approved by the Manager in an amount of at least \$500,000 in respect of any one occurrence.

(2) Every member referred to in subsection (1) shall maintain fidelity insurance against losses arising from dishonesty of employees, a proprietor or partners, directors, officers and shareholders in a form approved by the Manager for an amount of at least \$100,000 in respect of any one occurrence.

(3) The insurance policies referred to in subsections (1) and (2) shall contain an endorsement that stipulates that the Manager must be given written notice of any cancellation or non-renewal of such policy and that the cancellation or non-renewal of such policy does not become effective until thirty days after actual receipt of such notice by the Manager.

(4) A member's certificate of registration as an insurance broker expires on the date of the effective cancellation or non-renewal of an insurance policy unless before that date the insurance is replaced or the member otherwise satisfies the Manager that the member is in compliance with subsections (1) and (2).

21. (1) Every member who is a sole proprietor, partnership or corporation shall, within ninety days after the member's fiscal year-end, complete and file with the Manager a position report in Form 1 presenting fairly the member's financial and trust positions as of the member's fiscal year-end, and providing such details as may be required with respect to the member's financial guarantees and the markets with which the member places insurance, and such other information as is required on the form.

(2) Every member to whom subsection (1) applies shall, within nine months after the member's most recent fiscal year-end, complete and file a position report in Form 1 as of the day that falls six months after the member's most recent fiscal year-end.

(3) Every member to whom subsection (1) applies shall, within nine months after the member's last report under subsection (2) was filed, file a position report in Form 1 as of the day that falls six months after the member's last report was filed.

(4) Every member filing a report under this section shall file with the Manager written notice of every change in the non-financial information supplied in the member's most recently filed position report within thirty days after the change takes place.

22. The maximum fine that may be levied against a member for misconduct is \$25,000 unless the member is an individual, in which case the maximum fine is \$5,000.

23. All findings and decisions of the Qualification and Registration Committee and of the Discipline Committee, unless the respective Committee makes an order to the contrary, may be made available to any person on request and may be published in the RIBO Bulletin.

FORM 1

Registered Insurance Brokers Act

POSITION REPORT

REQUIREMENT TO FILE

This report must be filed by:

- (i) Any individual member who carries on business as an unincorporated sole proprietor or holds trust funds.
- (ii) Any partnership or corporation registered under the *Registered Insurance Brokers Act*.

A. IDENTIFICATION OF REPORTING MEMBER

(Name)	(Registration Number)
(Address)	
(City, Town, Province, Postal Code)	
Reporting Date	Type of Member: Proprietorship
Fiscal Year End	Partnership
Corporation	

B. INDIVIDUAL MEMBERS CONNECTED WITH REPORTING MEMBER

(Include only proprietor, partners, directors and employees registered at the date of reporting. Do not include sub-brokers.)

(Surname Given Name)	(Registration Number)	(Surname, Given Name)	(Registration Number)

PARTNERSHIP AND CORPORATE MEMBERS CONNECTED WITH REPORTING MEMBER

(include parent, subsidiaries, and members with common ownership)

(Name)	(Registration Number)	(Fiscal Year End)

C. TRUST POSITION

ASSETS

Cash on hand and bank balances of trust accounts (1) \$
Allowable premiums receivable
Total premiums receivable (2) \$
Less premiums over 90 days (to line 15) (3) \$
Allowable premiums receivable (4) \$
Investments held in trust as allowed by regulation (5) \$
TOTAL ASSETS (6) \$

LIABILITIES

Payable to insurance companies and other brokers (7) \$
Prepaid premiums (8) \$
Refunds due to insured (9)
TOTAL LIABILITIES (10) \$
NET TRUST POSITION (line 6 minus line 10) (to line 17) (11) \$

Name and address of bank(s) or institution(s) where trust funds are deposited and trust securities are held:
.....
.....
.....
.....

D. MEMBER'S CURRENT POSITION**CURRENT ASSETS**

Cash on hand and bank balances in general accounts	(12) \$
Investments other than trust investments	(13) \$
Accounts Receivable:	
Non insurance accounts receivable (after allowance for doubtful accounts) (14) \$	
Premiums receivable over 90 days (after allowance for doubtful accounts) (15) \$	
Total Accounts Receivable (14 plus 15)	(16) \$
Due from trust account	(17) \$
Other current assets	(18) \$
TOTAL CURRENT ASSETS	(19) \$

CURRENT LIABILITIES

Bank overdraft	(20) \$
Demand loans	(21) \$
Notes payable	(22) \$
Current portion of long-term debt	(23) \$
Accounts payable (other than to insurance companies)	(24) \$
Other current liabilities	(25) \$
TOTAL CURRENT LIABILITIES	(26) \$
NET CURRENT POSITION (line 19 minus line 26)	(27) \$

E. MEMBER'S EQUITY (Either E.1 or E.2 must be completed)**E.1 Proprietorship or Partnership**

TOTAL EQUITY (28) \$

E.2 Incorporated Member

Paid-up share capital at reporting date (29) \$

Contributed capital at reporting date (30) \$

Retained earnings at reporting date (31) \$

Loans from shareholders at reporting date,
net of advances (32) \$

TOTAL EQUITY (33) \$

F. FINANCIAL GUARANTEES (Either F.1 or F.2 must be completed)

F.1 Insurance Coverage (as required by section 20 of the Regulation)

Errors & Omissions	Fidelity
Amount:	Amount:
Insurer:	Insurer:
Policy Number:	Policy Number:
Expiry Date:	Expiry Date:
Deductible:	Deductible:

Note: The insurance policies noted above must be on a form acceptable to the Manager and must contain a clause which provides for thirty day written notice to the Manager in the event of cancellation or non-renewal.

ATTACH CERTIFICATES OF INSURANCE WITH RESPECT TO THE ABOVE POLICIES IF NOT PREVIOUSLY SUBMITTED TO RIBO.

F.2 Other Financial Guarantee

Attach letter detailing the financial guarantees posted in lieu of insurance protection.

G. INSURANCE MARKETS

List the principal general insurance markets with which you place insurance.

- 1.
- 2.
- 3.
- 4.
- 5.

(If additional space is required attach list)

H. CERTIFICATION (Either H.1 or H.2 must be completed)**H.1 For individuals** acting as unincorporated sole proprietors or who hold trust funds.

I,, being a registered insurance broker in the Province of Ontario do hereby certify that to the best of my knowledge and belief this report is complete and correct in all respects.

.....
(Date).....
(Signature).....
(Registration Number)**H.2 For partnerships, corporations** and forms of business other than sole proprietorships.

I,, do hereby certify that I am the designated individual and that to the best of my knowledge and belief this report is complete and correct in all respects.

.....
(Date).....
(Signature).....
(Registration Number)

FORM 2A

Registered Insurance Brokers Act

APPLICATION FORM FOR INDIVIDUALS

Name

Surname

Given Name(s)

Residence Address

Street and Number

City, Town Province Postal Code

Telephone: Area Code Number

Ontario Mailing Address (for service of documents under section 28 of the Act)

Street and Number

City, Town ONTARIO Postal Code

Form 2AREGULATION 991

Birth Date: Month / ; Day / ; Year /.....

Formal Education

Name of School	Indicate last year completed	Years Attended	Major Subjects	Diploma/ Degree Received
-------------------	------------------------------------	-------------------	-------------------	--------------------------------

Secondary School

College

University

Other

Indicate insurance training to date:

Present Employer

Name

Street and Number

.....

City, Town Province Postal Code

Telephone: Area Code Number

Nature of employer's business

Position in company

Date first employed by the above

If employer is an insurance broker, quote employer's registration number

Previous Employment History (in reverse chronological order)

<u>From/To</u>	<u>Name of Company</u>	<u>Position Held</u>	<u>Reason for Leaving</u>
----------------	------------------------	----------------------	---------------------------

1.

2.

3.

4.

Professional Associations or Memberships

Nature of AssociationClass of MembershipYear Admitted

1.

2.

3.

4.

Provide the names and addresses of two references, preferably persons who are registered insurance brokers.

1.

2.

Answer the following questions by checking the appropriate answer and providing explanations where necessary:

1. Are you a Canadian citizen at the date of application?

.... Yes

.... No

2. Provide: (a) business name;

(b) nature of business;

(c) position held,

for each business in which you are a sole proprietor, partner, officer or director.

3. Have you ever held a general insurance agent's, broker's or saleperson's licence or registration in any jurisdiction including Ontario?

.... Yes

.... No

If yes, provide — Type of licence or registration

If yes, provide — Jurisdiction

If yes, provide — Date licensed

If yes, provide — Date terminated

If yes, provide — Reason for termination

4. Have you ever been refused a licence or registration for any class of insurance in any jurisdiction, including Ontario?

.... Yes
.... No
If yes, provide — Type of licence or registration
If yes, provide — Jurisdiction
If yes, provide — Date
If yes, provide — Reason for refusal

5. Have you ever had an insurance licence or registration suspended or revoked?

.... Yes
.... No
If yes, provide — Type of licence or registration
If yes, provide — Jurisdiction
If yes, provide — Date
If yes, provide — Reason for suspension or revocation

6. Have you ever been convicted of a criminal offence or an offence under any Insurance Act?

.... Yes
.... No
If yes, explain
.....

7. Are there any litigation, criminal proceedings or charges pending against you or any company with which you were associated as a partner, officer or director?

.... Yes
.... No
If yes, explain
.....

8. Have you ever declared or are you in the process of declaring personal bankruptcy or has any company with which you were associated as a partner, officer or director ever declared or is any such company in the process of declaring bankruptcy?

.... Yes
.... No

If yes, explain

9. Do you hold any business licence(s) other than insurance?

.... Yes

.... No

If yes, indicate: Nature of Licence

If yes, indicate: Date Obtained

10. If registered, will your only business or employment be that of an insurance broker?

.... Yes

.... No

If no, explain

CERTIFICATION

I,, do hereby certify that if registered as an insurance broker, I will act in accordance with the *Registered Insurance Brokers Act*, its Regulations and By-laws and to the best of my knowledge and belief this application is complete and accurate in all respects.

Date

Signature

FORM 2B

Registered Insurance Brokers Act

APPLICATION FORM FOR SOLE PROPRIETORS AND INDIVIDUALS HOLDING TRUST FUNDS IN THEIR OWN NAME

DETAILS

Proprietor's Last Name

Proprietor's Given Name(s)

Business Name

Business Address

.....
City, Town Province

Postal Code Telephone: Area Code Number

(If business name is different from proprietor's name, attach a certified copy of registration under the *Business Names Act* or a predecessor Act.)

What is the fiscal year end of the business?

Month ... / ... Day ... / ...

When did the proprietorship commence business as an insurance intermediary? (approximate date)

Month ... / ... Day ... / ...

Has the business conducted any business other than that of a broker?

.... No

.... Yes (Specify)

Identify all persons employed or otherwise connected with the business (attach a list if necessary).

<u>Surname, Given Name(s)</u>	1980-1981 <u>Licence Number</u> (if licensed)
.....
.....
.....
.....
.....
.....

Complete all applicable portions of Form 1 and attach hereto.

Attach a resumé giving details relevant to your knowledge and practical experience in the insurance business, and listing any additional qualifications you may have.

Certification

I hereby certify as the proprietor of the above business that to the best of my knowledge and belief the above information is complete and accurate in all respects.

.....
Date Signature

FORM 2C

Registered Insurance Brokers Act

APPLICATION FORM FOR PARTNERSHIPS AND CORPORATIONS

Legal Name of Partnership or Corporation:

.....

Ontario Mailing Address (for service of documents under section 28 of the Act)

Street and Number

.....

City, Town, ONTARIO Postal Code

Telephone: Area Code Number

Head Office Address — same as above ☐ or:

Street and Number

.....

City, Town Province Postal Code

Telephone: Area Code Number

Business Organization

..... Partnership

..... Corporation

Date of Partnership Agreement or Incorporation:

Month /; Day /; Year /

Fiscal Year End: Month /; Day /

Is the only business of the firm that of an insurance broker as defined in the *Registered Insurance Brokers Act*?

.... Yes

.... No (Explain)

.....

Provide the name and address of bank(s) or institution(s) where trust funds will be deposited and trust securities held

.....

Identify the designated individual as described in section 6 or 7 of the Regulation:

Name Registration Number

Capitalization

Paid up share capital	\$
Contributed equity or capital	\$
Loans from Partners or Shareholders	\$
Total	\$

Financial Guarantees

Insurance Coverage

Errors & Omissions

Amount:
Insurer:
Policy Number:
Expiry Date:
Deductible:

Fidelity

Amount:
Insurer:
Policy Number:
Expiry Date:
Deductible:

Complete applicable portions of Form 1 and attach hereto.

ATTACH CERTIFICATES OF INSURANCE WITH RESPECT TO THE ABOVE POLICIES.

Other Financial Guarantee

Attach letter detailing the financial guarantees posted in lieu of insurance protection.

Additional information to be filed with this application:

1. Copy of articles of incorporation or partnership agreement pertaining to the nature of the business, and in the case of a partnership, a certified copy of the registration under the *Business Names Act* or a predecessor Act.

2. For partnerships, provide the following information for each partner of the firm:

Name
Place of residence
Occupation
Registration Number
Per cent Equity Interest
Per cent Voting Interest

3. (a) For corporations, provide the following information for directors, officers and shareholders (other than public shareholders) of the firm:

Name
Place of Residence
Occupation
Registration Number
Number of Shares Held in Each Class
Issued by the Corporation

(b) Provide the following information for each class of shares issued by the firm:

Class
Shares Authorized
Voting Privilege
Issued and Outstanding
Per cent held by individuals in (a) above

4. List of the names, address and telephone numbers of all Ontario branch offices.
5. Names and registration numbers of all partners, officers, directors and employees connected with the applicant firm.

Certification

I,, being a registered insurance broker and the designated individual as required do hereby certify that if registered, this applicant firm will act in accordance with the *Registered Insurance Brokers Act*, its regulations and by-laws and to the best of my knowledge and belief this application is complete and accurate in all respects.

.....
Date

.....
Signature

FORM 3A

Registered Insurance Brokers Act

RENEWAL FORM FOR INDIVIDUALS

DUE AND PAYABLE TO RIBO

(Amount)

(Date)

(Name and Mailing Address)

REGISTERED INSURANCE
BROKERS OF ONTARIO
(Mailing Address)

THE FOLLOWING QUESTIONS MUST BE ANSWERED AND CERTIFICATION SIGNED.

Yes

No

1. Are all the data shown below complete and accurate?

If answered no, show necessary changes.

.....
.....

2. Is your only business or employment that of an insurance

..... ..

If no, explain

.....

3. Are you registered under the *Real Estate and Business Brokers*

..... ..

If yes, state type of registration and when first obtained.

.....

4. Do you carry on business as an unincorporated sole proprietor?

..... ..

5. Do you control trust funds in your own name?

..... ..

6. Have you been convicted of a criminal offence not previously reported to RIBO?

..... ..

If yes, explain

7. Have you declared bankruptcy in the past year or are you in the process of
declaring personal bankruptcy?

If yes, explain

MEMBERSHIP INFORMATION: OUR RECORDS CONTAIN THE FOLLOWING INFORMATION.
PLEASE CHECK AND MARK THE NECESSARY CHANGES.

Registration Number Company Registration No.

Name and Ontario Mailing Address (for service of documents under section 28 of the Act) Name and Address of Firm

Home Telephone Business Telephone

Date of Birth Position

Date First Registered Control Trust Funds

Exemptions Granted:

By Privilege of section 36 of the Act:
.....

By Letters of Exemption:
.....

Restrictions on Registration:

Other Registrations: ; ; ;

Certification

To the best of my knowledge and belief, the above information is complete and accurate in all respects.

.....
Date Signature

FORM 3B

Registered Insurance Brokers Act

RENEWAL FORM FOR PARTNERSHIPS AND CORPORATIONS

DUE AND PAYABLE TO RIBO

(Amount) (Date)

(Name and Mailing Address)

REGISTERED INSURANCE BROKERS OF ON-
TARIO
(Mailing Address)

THE FOLLOWING QUESTIONS MUST BE ANSWERED, ENCLOSURES ATTACHED AND CER-
TIFICATION SIGNED.

	Yes	No
1. Are all the data shown below complete and accurate? If answered no, show necessary changes.
2. Is the firm's only business that of an insurance broker? If no, explain
3. Is the firm registered under the <i>Real Estate and Business Brokers Act</i> ? If yes, state type of registration and when first obtained
4. Has the firm amalgamated, united, merged or acquired the assets, business or shares of any other broker, licensed agent or adjuster in the past year?
5. In the case of a partnership, is the majority equity interest <i>and</i> the majority voting interest held by registered insurance brokers? or In the case of a corporation, is the majority of each class of shares issued and outstanding, beneficially owned by registered insurance brokers? If no to either of the above, provide details of exceptions Complete the information specified in the reverse of this Form.

MEMBERSHIP INFORMATION: OUR RECORDS CONTAIN THE FOLLOWING INFORMATION.
PLEASE CHECK AND MARK THE NECESSARY CHANGES.

Registration Number Partnership or Corporation

Name and Ontario Mailing Address (for service of documents under section 28 of the Act)

Designated individual Registration Number

Office Telephone Broker Since Fiscal Year End

Exemptions Granted:

By Privilege of section 36 of the Act:

By Letters of Exemption:

Restrictions on Registration:

Connected companies:

Registration Number

Name

- 1.
- 2.
- 3.

4.
5.

CERTIFICATION

I,, being a registered insurance broker in the Province of Ontario, and also being the required designated individual do hereby certify that to the best of my knowledge and belief, this document is complete and accurate in all respects.

.....
Date

.....
Signature

REVERSE OF REGISTRATION RENEWAL FORM 3B

(attach supplementary lists where necessary)

PARTNERSHIPS

Complete the following information on each partner in the firm:

<u>Name</u>	<u>Place of Residence</u>	<u>Occupation</u>	<u>Regis- tration Number</u>	<u>Per cent Equity Interest</u>	<u>Per cent Voting Interest</u>
-------------	---------------------------	-------------------	--------------------------------------	---	---

CORPORATIONS

- (a) Complete the following information on directors, officers and shareholders (other than public shareholders) of the firm:

<u>Name</u>	<u>Place of Residence</u>	<u>Occupation</u>	<u>Regis- tration Number</u>	<u>Number of Shares Held in Each Class Issued by the Corporation</u>
-------------	---------------------------	-------------------	--------------------------------------	--

- (b) Provide the following information for each class of shares authorized by the corporation:

<u>Class</u>	<u>Number of Shares Authorized</u>	<u>Voting Privilege</u>	<u>Number Issued and Outstanding</u>	<u>Per cent Held by Individuals in (a) Above</u>
--------------	--	-----------------------------	--	--

PARTNERSHIPS AND CORPORATIONS

Attach a list of names, addresses and telephone numbers of head office and all Ontario branch offices if other than address noted on obverse of this Form.

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